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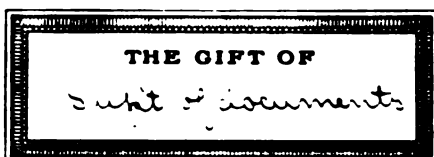
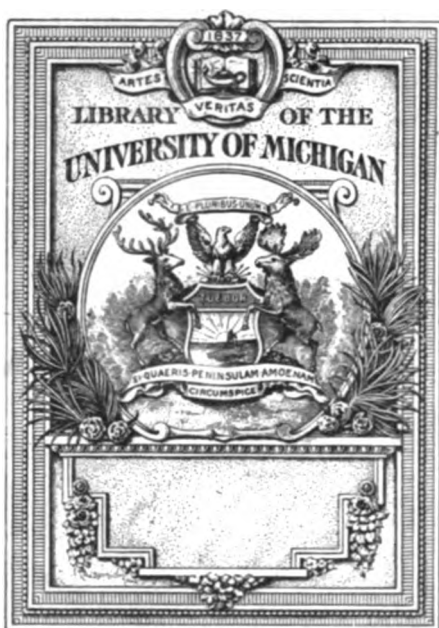
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INTERSTATE COMMERCE COMMISSION REPORTS

VOLUME XIX

DECISIONS OF THE
118. INTERSTATE COMMERCE COMMISSION
OF THE UNITED STATES

JUNE, 1910, TO DECEMBER, 1910

REPORTED BY THE COMMISSION



WASHINGTON
GOVERNMENT PRINTING OFFICE

1911

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INTERSTATE COMMERCE COMMISSION.

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INTERSTATE COMMERCE COMMISSION REPORTS.

No. 2879.

WILSON PRODUCE COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY.

Submitted April 18, 1910. Decided June 10, 1910.

Reparation awarded for unreasonable charges on one carload of watermelons from Lowell, Fla., consigned to Pittsburg, Pa., and diverted en route at Altoona, Pa., as the diversion should have been made without additional charge.

J. J. Foley for complainant.

Henry Wolf Bikle for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

In June, 1909, complainant shipped a carload of watermelons from Lowell, Fla., consigned to Pittsburg, Pa. It was diverted en route and delivered at Altoona, Pa., an intermediate point. After a brief delay there, the car was ordered to Pittsburg. For the movement from Altoona to Pittsburg the rate on watermelons was applied and \$59.15 collected.

At the time the shipment moved the tariffs provided that shipments of perishable products might be diverted or reconsigned once north of Potomac Yard, Va., without extra charge. No provision was made for a second diversion or reconsignment north of that yard. The present tariff (G. O., I. C. C. No. 1738, effective April 1, 1910), provides for subsequent diversions or reconsignments north of Potomac Yard at a charge of \$5 each, provided the point is on the direct line of the original consignment.

Complainant contends that the failure of defendant to provide for a second reconsignment north of Potomac Yard subjected him to an

unreasonable charge for the movement of this freight and that he should have been charged only \$5 additional for the movement from Altoona to Pittsburg. The defendant expresses a willingness to pay reparation in the amount of \$54.15, the difference between the amount charged, \$59.15, and \$5 for diversion, the same as is provided in its present tariffs.

At the hearing of this case no contention was made that there had been any misapplication of the rules relating to diversions and reconsignments in the tariffs of defendant. At the time this diversion occurred, we find upon an examination of the tariffs of defendant on file with the Commission, that diversion and reconsignment were allowed as follows, G. O., I. C. C. No. 639:

3. Upon or previous to the arrival of cars at Potomac Yard, Va., orders for reforwarding should be filed with the freight agent at Potomac Yard, Va., and such diverting orders will be accepted and cars reforwarded to new destination, and settled on basis of rates from point of origin to such destination, if through rates are in effect. If through rates are not in effect from point of origin to destination, shipments will be charged on the basis of the rates to Washington, D. C., plus the published rates from Washington, D. C., to final destination.

4. Only one diversion or reconsignment will be permitted on any shipment after leaving Potomac Yard, Va.

Under this tariff, if the diversion of the watermelons to Altoona occurred at Potomac Yard, the shipper had a right to have the melons reconsigned from Altoona to Pittsburg without additional charge.

Upon the hearing it did not clearly appear whether the diversion to Altoona was before or after the car left Potomac Yard, but subsequent correspondence with the defendant discloses that the order for diversion was placed with the proper party two days before the passing of the car through Potomac Yard. It follows that the diversion from Altoona to Pittsburg should have been made without additional charge, and that the complainant is entitled to reparation in the sum of \$59.15, with interest from July 1, 1909.

19 I. C. C. Rep.

No. 3174.
EDWARD G. DAVIES
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted May 27, 1910. Decided June 10, 1910.

Complaint alleges discrimination in assessment of charges for unloading consolidated carloads of vegetables. Hearing developed that the circumstances in connection with the shipment in question were unusual and not previously correctly understood by either complainant or defendant. No order entered.

Edward G. Davies for complainant.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complaint alleges that complainant is subjected to undue, unreasonable, and unlawful discrimination in that defendant charges complainant for the service of unloading consolidated carload shipments of vegetables upon its platform or at its freight house while refraining to make such charge for the same service for other shippers.

Straight carloads of vegetables to one consignee are delivered on defendant's team tracks and unloaded by consignees, but so-called "consolidated" carloads, which consist of shipments to numerous consignees, are unloaded by defendant and assorted upon its platform or in its freight house for the several consignees, and for such unloading and assorting the tariff charge of one cent per 100 pounds is assessed.

During certain seasons defendant runs so-called "pick-up" trains or cars and gathers less-than-carload shipments in iced refrigerator cars. It has a tariff rule that when such pick-up trains or cars are not operated or when shippers desire cars for their separate loading, less-than-carload shipments will not be forwarded in iced refrigerator cars except when 10,000 pounds or more are loaded or paid for.

The complaint is based upon and refers specifically to the movement of and charges on one carload of cabbage as follows:

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A car was placed by defendant for loading at St. Rose, La., a non-agency station, on order of Charles Elfer, into which Mr. Elfer loaded 150 crates of cabbage for S. & H. Levy & Company, Chicago. This shipment equaled or exceeded in weight the minimum carload weight required by defendant's tariff, but F. O. Weaver also loaded into the same car at the same time 60 crates of cabbage, 20 of which were for the same consignee, S. & H. Levy & Company, and 40 of which were for six additional consignees. These shippers, in making out bill of lading, apparently did not understand that the bill should read to one consignee even though the car was loaded under the consolidated carload privilege. The bill of lading and the car were accepted by the conductor and taken to Kenner to be waybilled by the agent. The agent waybilled 150 crates from Elfer to Levy & Company, 20 crates from Weaver to Levy & Company, and 40 crates from Weaver to "diverse parties," and noted on the waybill a request that the agent at Chicago assort shipments as per marks on crates and correct billing accordingly.

On receipt of this billing the agent at Chicago instructed the warehouse man to the effect that this was a consolidated shipment and should be unloaded and check of same returned so that billing might be corrected. Thereupon the car was unloaded and the 170 crates were delivered to Levy & Company without the assessment of any unloading charge.

Later, with the view that technically an unloading charge should have been assessed defendant collected from Levy & Company \$2.18 for such unloading.

At the hearing considerable discussion was had as to the proper interpretation of defendant's rule for assessing the charges on a minimum of 10,000 pounds on less-than-carload lots which are moved in iced refrigerator cars when their pick-up refrigerator service is not in operation, and it is assumed and understood that whatever revision this rule may need in order to make its application clear and definite will be promptly made.

If bill of lading upon which this car moved from the nonagency station had designated definitely the consignees and number of crates for each of them for the 40 crates which were consigned to "diverse parties," defendant could have unloaded those 40 crates at its freight house, and then set the car on the team track for unloading the carload lot of Levy & Company. No unloading charge was made against the "diverse parties," and it is now conceded under all of the circumstances surrounding this shipment that the collection of the \$2.18 from Levy & Company was not justified.

Complainant expresses the belief that the shippers intended this to be a consolidated carload shipment from St. Rose. Complain-

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ant alleges that he has had considerable difficulty in connection with his shipments, and over proper interpretation of tariffs. He frankly admits that the conditions connected with the movement and unloading of the carload here in question were unusual and not exactly as originally understood by him.

Obviously it is proper for defendant to refund to Levy & Company the \$2.18 which, under the circumstances, should not have been charged, and doubtless out of these experiences will come some better understandings and such clarification of rules as will avoid future similar misunderstandings. No order appears to be necessary.

19 I. C. C. Rep.

No. 2762.

SOUTHERN CALIFORNIA SUGAR COMPANY

v.

SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD
COMPANY ET AL.

Submitted March 29, 1910. Decided June 10, 1910.

1. The power of the Commission to establish through routes and joint rates can not be invoked unless it appears that the transportation point at which the complainant is located is not reasonably served by a through route now existing.
2. On petition seeking the institution of through routes and joint rates on sugar from New Delhi, Cal., to Missouri River points via the line of the Pacific Electric Railway Company, on the tracks of which the complainant is located, and transcontinental carriers through Los Angeles; *Held*, That the line of the Southern Pacific Company, which runs within three-fourths of a mile of the complainant's plant, forms with its eastern connections a reasonable and satisfactory through route from New Delhi. Complaint dismissed.

Seth Mann for complainant.*C. W. Durbrow, F. C. Dillard, and P. F. Dunne* for Southern Pacific Company.*W. R. Kelly and A. L. Halstead* for San Pedro, Los Angeles & Salt Lake Railroad Company.*E. W. Camp, Robert Dunlap, T. J. Norton, and U. T. Clotfelter* for Atchison, Topeka & Santa Fe Railway Company.*James A. Gibson* for Pacific Electric Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Complainant is a California corporation engaged in the manufacture and sale of sugar and other products from sugar beets. Its factory is located at New Delhi, Cal., some 35 miles southeast of Los Angeles, on the line of the Pacific Electric Railway Company. A branch line of the Southern Pacific extending from Los Angeles through Santa Ana to Newport Beach runs within three-fourths of a mile of New Delhi, while a branch of the Santa Fe passes it at a distance of approximately $1\frac{1}{2}$ miles. All three lines reach the town of Santa Ana, which is situated about $2\frac{1}{2}$ miles from New Delhi, but at the present

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time there is no physical connection between the tracks of the electric railway company and the steam roads at that point.

When the promoters of the Southern California Sugar Company were searching for a favorable site for the location of their plant they were urged to establish themselves either upon the line of the Southern Pacific or that of the Santa Fe, assurances being given that they would be accorded the same joint rates on sugar to eastern markets as are now enjoyed by other California factories. It appears, however, that the citizens of Santa Ana and vicinity, whose cooperation was apparently essential to the success of the complainant's enterprise, were willing to lend their assistance only upon the express condition that the factory should not be located upon the line of a steam railroad. Santa Ana interests subscribed generously to the company's stock, and 30 acres of land $2\frac{1}{2}$ miles south of the town were donated for a factory site. These inducements, in conjunction with certain natural advantages of location, led the complainant to construct its plant at New Delhi.

The complainant acquired and deeded to the Pacific Electric Railway Company in fee a right of way 60 feet in width from Santa Ana to New Delhi, and the railway company thereupon extended its tracks and constructed spurs into the factory. In the same manner a right of way through the beet fields to Huntington Beach was secured, and with the financial assistance of the complainant the construction of the line was completed. The sugar company now secures its supply of sugar beets over this branch.

Complainant's factory has been in operation since July 1, 1909. The plant is in every respect modern, and when run to capacity will consume from 72,000 to 75,000 tons of beets per annum and produce 22,000,000 pounds, or 11,000 tons, of sugar. This will amount to some 360 carloads of 60,000 pounds each, 75 per cent of which it is stated must find a market at the Missouri River and intermediate points. During the first year of its operation the factory produced and shipped 135 carloads of sugar and had 56 carloads in the warehouse at the close of the season.

In addition to the plant of the complainant there are 12 beet-sugar factories in California, all served directly by the lines of the Southern Pacific Company, or the Atchison, Topeka & Santa Fe Railway Company. These factories are located at the following points: Alvarado, Batavia, Chino, Corcoran, Hamilton, Los Alamitos, Ontario, Oxnard, Salinas, Spreckels, Visalia, and Watsonville. In the southern part of the state, and at comparatively short distances from New Delhi, sugar factories are located on the lines of the Southern Pacific Company at Chino, Ontario, and Los Alamitos, and on the line of the Santa Fe at Corcoran. From all of these

factories the defendants, other than the Pacific Electric Railway Company, make the same joint rates for the carriage of sugar to the Missouri River and intermediate points. These rates at the present time are 55 cents per 100 pounds upon a carload minimum of 60,000 pounds and 60 cents upon a minimum of 33,000 pounds. No joint rates are in effect from New Delhi, the complainant being under the necessity of paying the local rate of the Pacific Electric Railway Company to Los Angeles and the full 55 or 60 cent rate beyond. The present rate of the Pacific Electric is 2½ cents per 100 pounds, but the statement is made that a proper charge for the service would be 10 cents. It is indicated that that basis will probably be established in the near future.

The Southern Pacific Company has repeatedly expressed its willingness to construct a siding at the point on its line nearest the factory and there receive the complainant's shipments. To this the complainant answers that to team-haul sugar is impracticable, first, because of the impassibility of the roads in winter, and second, because serious injury would be caused by dust in summer. Both the Southern Pacific Company and the Santa Fe have offered to construct spurs to the factory upon the usual terms. The complainant states that it will welcome the building of the spurs, but points out certain alleged legal obstacles which even if eventually overcome would postpone relief until two or three years hence. It also appears that the Southern Pacific Company has offered to construct an interchange track connecting with the tracks of the Pacific Electric Railway Company in Santa Ana and accept cars loaded with the complainant's product at that point. This offer embraces the institution of joint rates from Santa Ana to all the territory in which California sugar finds a market. The objection offered by the complainant to this tender is that the facilities for the interchange of freight in Santa Ana are inadequate.

The complainant's efforts to secure the rates to which it believes itself entitled having failed, this proceeding is instituted for the purpose of compelling the defendants to join in forming through routes from New Delhi to Missouri River and intermediate points and to establish joint rates which shall not exceed those now in effect from competing sugar factories in California. It is alleged that the refusal of the defendants to establish such rates constitutes unlawful discrimination. An effort was made at the hearing to extend the scope of the inquiry to other commodities than sugar and other shipping points than New Delhi, but the prayer of the petition is apparently confined to the movement of sugar from New Delhi, and it would seem that this is the only issue properly before us.

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The Pacific Electric Railway Company answers that it stands ready and willing to enter into the through routes and establish the joint rates which the complainant seeks, but the several other defendants resist the petition.

Some time since the San Pedro, Los Angeles & Salt Lake Railroad Company agreed to establish joint rates on various products from points on the line of the Pacific Electric Railway Company, and notified the agent of the Transcontinental Freight Bureau to put such rates in effect. However, through some unexplained intervention, the joint rates were not established. The general traffic manager of the San Pedro, Los Angeles & Salt Lake Railroad Company writes to the interchange manager of the Pacific Electric Railway Company, under date of December 5, 1907, as follows:

No person regrets more than I do our inability to join hands with you in a through tariff, but other interests evidently got very busy, but we have not entirely given up the hope that in the very near future we will be able to issue joint tariffs. Therefore I hope you will leave the proposition still open, or, if you desire it, I will hold the matter in abeyance until further advised by you.

While the Salt Lake road by its answer opposes the relief sought by the complainant it was not represented at the hearing or in argument before the Commission.

The Atchison, Topeka & Santa Fe Railway Company states that it does not make joint rates with electric roads "because of their lack of equipment and for other reasons which renders such companies unable to enter into mutual arrangements." It is in evidence, however, that the Pacific Electric Railway is a standard-gauge modern road with an aggregate mileage of some 313 miles and amply equipped for the carriage of freight as well as passengers. It seems clear that as far as physical efficiency is concerned no valid objection can be urged against its joining in through routing arrangements with the other respondents. This line of defense was virtually abandoned at the hearing.

It is argued that by locating its factory at New Delhi the complainant secured important advantages in the form of subscriptions to its stock and the donation of land for a factory site. It is pointed out further that it already has the better of its competitors by reason of its proximity to the beet fields and the low rates which it consequently enjoys for the transportation of its raw material, but such advantages, it is hardly necessary to remark, do not affect a shipper's rights to reasonable and nondiscriminatory rates and proper routing arrangements for the movement of his finished product.

It is next urged that when the complainant located its plant at New Delhi it was with the full knowledge that it could not avail itself

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of the rates enjoyed by competing factories; consequently it can not now be heard to complain that it labors under a disability. This objection is likewise without persuasive force. For reasons satisfactory to itself the complainant elected to build at New Delhi instead of on the line of the Southern Pacific Company, but it did not thereby forfeit any rights guaranteed by the act to regulate commerce.

These questions are merely preliminary—they are not addressed to the merits. The real problem before us is presented in the contention that under existing conditions the complainant enjoys a reasonable and satisfactory through route on sugar from New Delhi to the Missouri River. If this contention is sustained, the complainant's case must necessarily fail, for our power to require the institution of through routes and joint rates is expressly conditioned upon there being "no reasonable or satisfactory through route" in existence.

The complainant relies upon the Commission's decision in *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C. Rep., 460; but an examination of that decision will show that it lends no support to the complainant's contentions. It developed in that inquiry that no through route of any character was in effect from the complainant's mine, or the shipping community in which it was included, to the various destinations at which it sought to market its coal. A through route and joint rate were found to be essential, and the Commission so ordered, but we expressly pointed out in the case of the *Enterprise Fuel Co. v. P. R. R. Co.*, 16 I. C. C. Rep. 219, 222, that a shipper "is not entitled to a through route because he may not be as conveniently served by one railroad as another." The rule laid down in this case, as well as that established in the case of the *Chicago & Milwaukee Electric R. R. Co. v. I. C. R. R. Co.*, 13 I. C. C. Rep., 20, is briefly this: The power of the Commission to establish through routes can not be invoked unless it appears that the transportation point at which the complainant is located is not reasonably served by a through route now existing. Applying this test to the case confronting us, can it be said that the through route made up of the Southern Pacific Company and its connections does not adequately serve the complainant's factory and the shipping community of which it forms a part?

The Southern Pacific Company has offered to construct a siding on which cars could be placed for loading only three-fourths of a mile from the sugar factory, and doubtless this siding would be in operation to-day had there been reason to believe that it would be used. The complainant objects that to team-haul sugar is utterly impracticable—that the universal custom is to load sugar in cars directly at the factory door. This objection would have the same force if the Southern Pacific Company had a freight-receiving station within a few rods of the complainant's plant, and yet could it be maintained that

satisfactory service was not accorded that point? The statute does not contemplate that a shipper who enjoys spur-track service from one carrier shall be entitled to say that the service accorded him by other lines in the immediate vicinity is inadequate. We think there is no escape from the conclusion that the Southern Pacific Company and its connections form what is in contemplation of the law a satisfactory through route for the transportation of sugar from New Delhi, and this finding precludes our making the order which the complainant seeks.

The complaint will be dismissed.

19 L. C. Rep.

No. 2078.
H. F. CADY LUMBER COMPANY
v.
MISSOURI PACIFIC RAILWAY COMPANY ET AL.

Submitted March 9, 1910. Decided June 3, 1910.

The charge of 28 cents per 100 pounds on complainant's shipments of lumber dressed in transit from points in Louisiana to Omaha, Nebr., made after May 9, 1906, was unreasonable to the extent that it exceeded 23 cents. Reparation awarded.

Baldrige, De Bord & Fradenburg for complainant.

James C. Jeffery, H. J. Campbell, and B. M. Flippin for Missouri Pacific Railway Company and St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This is a claim for reparation on 219 carload shipments of lumber made on various dates between April 18, 1904, and September 23, 1906. The shipments moved over the lines of the defendants from Le Compt and Cady Switch, La., points on the Texas & Pacific, to Omaha, Nebr., and various other points. The claim was originally presented to the Commission June 29, 1907. It is alleged in the complaint that, with the exception of the shipments involved, complainant from early in 1901 up to the fall of 1905 shipped lumber from the points named to Alexandria, La., where it was dressed under a reconsignment privilege; that the defendants collected the local rate of 5 cents per 100 pounds for the transportation from point of origin to Alexandria; and that when the lumber was dressed and sent forward the through rate of 23 cents per 100 pounds was applied from Alexandria to Omaha and other destinations, and a refund of the 5-cent local rate made. On the shipments in question the local rate in addition to the through rate was retained by defendants for the stated reason that there was no tariff authority for the reconsignment privilege at Alexandria applicable to shipments from points beyond on the Texas & Pacific.

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Examination of tariffs on file shows that during the period from February 15, 1904, to May 9, 1906, there were no published and filed milling-in-transit rules in force at Alexandria applicable on traffic to Omaha or the other points involved. From May 9, 1906, until October 25, 1908, lumber from points on the St. Louis, Watkins & Gulf line running parallel to the Texas & Pacific into Alexandria and beyond the latter point might be milled in transit at Alexandria and shipped to Omaha on the through rate under proper tariff provision. From June 1, 1901, until May 9, 1906, the Texas & Pacific published a tariff permitting lumber to be milled at Alexandria in transit, but neither the St. Louis, Iron Mountain & Southern nor the Missouri Pacific was a party to that tariff. It appears that from May 9, 1906, to July 1, 1907, the Missouri Pacific published a tariff granting a transit privilege at Alexandria on shipments from points on the Texas & Pacific, including Le Compt and Cady Switch. This tariff provided for the application of the through rate of 23 cents on surrender of the local expense bill. All the cars in question moved prior to January 1, 1907, and therefore failure to apply the through rate to shipments made after May 9, 1906, was an error on the part of the defendants. It does not appear whether the provisions of the tariff as to the surrender of local expense bills, etc., was complied with by complainant. However this may be, we are of the opinion that the charge of 28 cents per 100 pounds on the shipments herein made after May 9, 1906, was unreasonable to the extent that it exceeded 23 cents and that complainant is entitled to an order of reparation. We further find that between May 9, 1906, and August 11, 1906, complainant shipped from Cady Switch and Le Compt, La., to Omaha, Nebr., 90 cars of lumber which was dressed in transit at Alexandria, that the aggregate weight of the shipments was 3,680,780 pounds, and that complainant is entitled to reparation from the Missouri Pacific Railway Company and the St. Louis Iron Mountain & Southern Railway Company in the sum of \$1,840.39, with interest from October 1, 1906. Bulletin No. 4 provides:

Adhering to Rule 6 the Commission will not sanction the application retroactively of a reconsigning privilege even though it had long been the custom of the carrier to permit reconsignment without tariff authority.

This principle has been applied in numerous cases. *Shiel & Co. v. I. C. R. R. Co.*, 12 I. C. C. Rep., 210; *Kansas City Hay Co. v. St. L. & S. F. R. R. Co.*, 14 I. C. C. Rep., 631; *Folmer & Co. v. Gt. N. Ry. Co.*, 15 I. C. C. Rep., 33; *Kile & Morgan v. Deepwater Ry. Co.*, 15 I. C. C. Rep., 434; *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.*, 16 I. C. C. Rep., 558; and *Acme Cement Plaster Co. v. C. & A. R. R. Co.*, 17 I. C. C. Rep., 220.

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In this case we find no sufficient reason to depart from the well-settled rule of the Commission, and the claim for reparation must be denied on shipments moving prior to May 9, 1906.

The representatives of the Missouri Pacific and St. Louis, Iron Mountain & Southern expressed willingness to make refund of the amount claimed by complainant on the ground of discrimination, but the fact that the carriers agree to pay the amount does not form any basis upon which the Commission can make its findings or apply retroactively the transit privileges above stated.

An order will be entered accordingly.

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No. 2916.
LULL CARRIAGE COMPANY
v.
CHICAGO, KALAMAZOO & SAGINAW RAILWAY COMPANY
ET AL.

Submitted April 6, 1910. Decided June 3, 1910.

1. The mere fact that a minimum applicable to parts of a combination of rates may be higher or lower than the minimum applicable to the joint through rate does not overcome the presumption of unreasonableness in a joint rate and minimum in excess of the sum of the locals and resulting from the respective minima applicable thereto. Were the Commission to hold otherwise carriers, by simply making differing minima on local and through shipments, could carry all through traffic via gateways they might select on higher charges than would result from combinations of locals through the same gateways.
2. Under the circumstances here shown to exist complainant was subjected to an unreasonable charge on its shipment of wooden buggy bodies in the white from Moline, Ill., to Kalamazoo, Mich., and is entitled to an award of reparation.
3. Complainant's shipment of cutters from Kalamazoo, Mich., via Chicago, to Fond du Lac, Wis., does not present a combination of locals lower than the through rate on which the presumption obtains that the through rate was unreasonable, and reparation as to this feature denied.

G. M. Stephen for complainant.

H. C. Martin for Grand Trunk Western Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

William Ellis and *F. G. Wright* for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint involves two shipments, which moved over separate routes. The first is a shipment of 375 wooden buggy bodies in the white, made February 11, 1908, from Moline, Ill., to Kalamazoo, Mich. The shipment weighed less than 18,000 pounds and moved over the Chicago, Milwaukee & St. Paul and Lake Shore & Michigan Southern lines. Charges were collected on the basis of the joint through class rate of 43 cents per 100 pounds, minimum 18,000 pounds,
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for a 50-foot car, which was used for this shipment. The tariffs show that there was a rate in effect on this commodity from Moline to Chicago, Ill., of 10 cents per 100 pounds via the Chicago, Milwaukee & St. Paul, 20,000 pounds minimum, and a rate of 22 cents via the Lake Shore & Michigan Southern from Chicago to Kalamazoo, 18,000 pounds minimum, applicable to a 50-foot car, making a combination of 32 cents per 100 pounds. Reparation is asked, based on the difference between the joint rate and the sum of the locals.

Defendants strenuously contend that no presumption of the unreasonableness of the through rate may properly be applied in this case because complainant is seeking to compare a through rate with one minimum with two locals, one of which has a higher minimum. It is insisted that such a combination is not properly comparable and that the rule of the Commission that a through rate higher than the combination of locals over the same route is *prima facie* unreasonable has no application to the case here presented.

The minimum weights on all carload shipments are to be considered as part of the rates, and the mere fact that a minimum applicable to parts of a combination of rates may be higher or lower than the minimum applicable to the joint through rate does not overcome the presumption of unreasonableness in a joint rate and minimum in excess of the sum of the locals and resulting from the respective minima applicable thereto. Were we to hold otherwise, carriers, by simply making differing minima on local and through shipments, could carry all through traffic via gateways they might select on higher charges than would result from combinations of locals through the same gateway. The ultimate charge is what the shipper is interested in, and it is the ultimate charge, where the service is substantially the same, to which the rule of the Commission is directed. This record shows that complainant might have shipped his commodity from Moline to Chicago on the 20,000-pound minimum at a charge of \$20 and from Chicago to Kalamazoo on the 18,000-pound minimum at a charge of \$39.60, or a total charge of \$59.60. He was required to pay \$77.40 on the through shipment, a difference of \$17.80. The defendants in no way justified or attempted to justify the higher through charge. The only defense presented was that because of the different minima no presumption should arise as to the reasonableness of the through rate. Under the circumstances here shown to exist we find that complainant was subjected to an unreasonable charge on the shipment in question to the extent of \$17.80 and is entitled to an award of reparation from these defendants in that sum, with interest from March 24, 1908.

The other shipment involved in this complaint was a carload of cutters made October 23, 1907, from Kalamazoo, Mich., to Fond du Lac, Wis. The shipment weighed 12,500 pounds and moved via the

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lines of the Chicago, Kalamazoo & Saginaw; Grand Trunk Western; and Chicago & North Western. Charges were collected on the basis of the through joint class rate of 55 cents per 100 pounds. It is alleged in the complaint that this rate was unreasonable for the reason that there was in effect at the same time a combination of local rates that were lower. The traffic moved via Chicago. The claim is that there was a rate from Kalamazoo to Milwaukee, Wis., of 13.5 cents per 100 pounds and from Milwaukee to Fond du Lac of 11 cents per 100 pounds, or a combination of $24\frac{1}{2}$ cents. It appears that this combination was not effective via Chicago over any route but was effective via the "across lake route." Therefore, this case does not present a combination of locals lower than the through rate on which the presumption obtains that the through rate was unreasonable. There was not at the time the shipment moved and there is not now a rate on this traffic from Chicago to Fond du Lac of 11 cents per 100 pounds. There is no allegation in the complaint with respect of the reasonableness of the rate over the route by which the traffic moved, no hearing was had on that question and therefore no finding is warranted with respect thereto.

An order will be entered accordingly.

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No. 3032.

SUNNYSIDE COAL MINING COMPANY ET AL.

v.

DENVER & RIO GRANDE RAILROAD COMPANY ET AL.

Submitted May 10, 1910. Decided June 3, 1910.

1. Reparation is due to the person who has been required to pay the excessive charge as the price of transportation or on whose account the same was paid, and who was the true owner of the property transported during the period of transportation.
2. Upon the facts disclosed by the record herein complainants' claims for reparation on shipments of coal from the Walsenburg coal district of Colorado to points on the Union Pacific in Kansas are denied.

C. W. Durbin and Fred Williams for complainants.

E. N. Clark and T. L. Philips for Denver & Rio Grande Railroad Company.

E. E. Whitted and J. M. Cates for Colorado & Southern Railway Company.

F. C. Dillard and Dorsey & Hodges for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This is a claim for reparation on the part of seven coal mining companies operating in the Walsenburg coal district of Colorado. It is alleged in the complaint that the charges by defendants for the transportation of coal from the Walsenburg district mines to points on the line of the Union Pacific in Kansas are unreasonable to the extent that they exceed \$3.50 per ton between the eastern Colorado line and Salina, Kans., and \$3.75 per ton from Salina to the Missouri River. The shipments complained of moved between May 1, 1908, and March 13, 1909. Reparation in the sum of \$3,451.21 is asked.

It appears that during the period complained of coal moved from mines of complainants to the Kansas points on combinations resulting in rates of \$4 to Oakley, Kans., and \$4.35 beyond.

The complainants in this case were parties to the case of *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 16 I. C. C. Rep., 387. In
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that case we reviewed the rates here in question. The prayer of the petition in the *Cedar Hill case* asked for reparation in substantially the same terms as this case. While it is true that no mention was made of reparation in the report in the above-cited cases, which were dismissed because the rates were not found unreasonable, that matter was considered and it was concluded that under all the circumstances no reparation should be awarded. It was known by the Commission and stated in the finding in the *Cedar Hill case* that since the hearing rates to Kansas points on the Union Pacific had been reduced to put them in line with rates prescribed by the Commission in *Nebraska State Ry. Com. v. U. P. R. R. Co.*, 13 I. C. C. Rep., 349. It was also stated in argument and in briefs in the *Cedar Hill case* that the joint through route and rates had been put into effect from the Walsenburg mines to points in Kansas on the line of the Union Pacific. There is nothing in this record which convinces us that our conclusion with respect to award of reparation in that case was in error. We do not find from the whole record made in both cases that an award of reparation should be made to these complainants.

In addition to this it is admitted in the record in this case that none of these complainants paid the freight rates on which they seek reparation. It is the contention of complainants' counsel that as a matter of law either the consignor or consignee can secure reparation on claim to the Commission without regard to which of them paid the freight charges. We have carefully examined the authorities cited in counsel's briefs and are by no means convinced that the rule announced by the Commission in the case of *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. Rep., 199, is not correct. We stated therein that:

Reparation is due to the person who has been required to pay the excessive charge as the price of transportation * * * or on whose account the same was paid, and who were the true owners of the property transported during the period of transportation.

So far as we are aware the Commission has never knowingly departed from this rule. The court cases cited by counsel for complainants hold that either the consignor or consignee may sue in case of loss or damage or breach of contract of affreightment. In other words, each has a beneficial interest to the extent of making either of them a proper party plaintiff in such a proceeding. These cases do not in any way controvert the principle announced by the Commission that the party paying the excessive charge is the one entitled to an award of reparation on finding that the rate charged is unreasonable and therefore unlawful. The principle announced in the case of *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, *supra*, is reaffirmed.

For the above reasons the complaint will be dismissed.

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No. 2509.

WACO FREIGHT BUREAU ET AL.

v.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY
ET AL.

Submitted April 21, 1910. Decided June 10, 1910.

1. Rates named in tariffs on import traffic from New Orleans to Texas common points held not to apply to bananas. *Payne v. M. L. & T. R. R. & S. S. Co.*, 15 I. C. C. Rep., 185, followed.
2. Commodity rate of 72 cents now in effect on bananas not shown to be unreasonable.

S. H. Cowan for complainants.

H. M. Garwood for Houston & Texas Central Railroad Company; Galveston, Harrisburg & San Antonio Railway Company; Texas & New Orleans Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Louisiana & Western Railroad Company; and Gulf, Colorado & Santa Fe Railway Company.

J. R. Christian for Morgan's Louisiana & Texas Railroad & Steamship Company, Galveston, Harrisburg & San Antonio Railway Company; and Texas & New Orleans Railway Company.

A. H. McKnight for Missouri, Kansas & Texas Railway Company of Texas.

E. F. Hillies and *E. B. Perkins* for St. Louis Southwestern Railway Company of Texas.

A. C. Fonda for Gulf, Colorado & Santa Fe Railway Company.

J. B. Bartholomew and *Thomas J. Freeman*, Receiver, for International & Great Northern Railroad Company.

George Thompson for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

Cockrell, Commissioner:

The complainants in this case are the Waco Freight Bureau, the Fort Worth Freight Bureau, and sundry specifically enumerated firms and persons located in the state of Texas, all engaged in the

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business of buying, selling, and shipping bananas, except, of course, the freight bureaus, whose individual members are so engaged. Defendants are common carriers, subject to the act, and comprise about all the roads operating in or into Texas.

The complaint is directed at the rates on bananas from New Orleans, La., to Texas common points, particularly Waco, Fort Worth, Dallas, San Antonio, Austin, Tyler, Corsicana, Greeneville, Paris, Brownwood, Dublin, and Abilene, Tex.

It is alleged by complainants that from November 14, 1907, to May 8, 1908, a rate of 42 cents per 100 pounds was published in tariffs of defendants on import traffic from New Orleans to Texas common points; that this import rate was lawfully applicable to bananas because bananas are import traffic and move from shipside, New Orleans; that while the application of this 42-cent import rate to bananas was specifically withdrawn by the other carriers, May 8, 1908, it still appeared in M., K. & T. Ry. Co. of Texas, tariff I. C. C. B-404 until the issue of Supplement 5 to that tariff, effective August 25, 1908, and that as the Sunset Central lines were parties to that tariff, the application of the 42-cent rate to bananas should be extended to August 25, 1908; that on several shipments moving between November 14, 1907, and August 25, 1908, the 42-cent import rate was assessed, but on all the others, comprising several hundred carloads, the local rate of 72 cents was collected. On such shipments reparation is asked in the amount of the difference between the local and the import rates.

The complaint further alleges that the rate of 72 cents now in effect on bananas from New Orleans to Texas common points is unreasonable in and to the extent that it exceeds a rate of 42 cents and the establishment of a 42-cent rate is sought. No reparation is asked in this connection.

All of the answers of defendants deny that the import rate was applicable to bananas; deny that bananas move from shipside and are import traffic within the meaning of that term as used in the tariffs in question, and rely on the decision of the Commission in the case of *Payne v. M. L. & T. R. R. & S. S. Co.*, 15 I. C. C. Rep., 185. They further deny that the rate of 72 cents is unreasonable.

The case can best be disposed of by a consideration of—

First, whether the import rate of 42 cents lawfully applied to bananas during the period named, and

Second, whether the rate now in effect is unreasonable.

As to the first contention, there is need to say but little. The method of handling bananas through the port of New Orleans was exhaustively treated in the cases of *Payne v. M. L. & T. R. R. & S. S. Co.*, *supra*, and *Topeka Banana Dealers Asso., v. St. L. & S. F.*

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R. R. Co., 13 I. C. C. Rep., 620. There the transportation of the product from the plantation to the consumer was reviewed. In the *Payne* case the complainants sought to apply the import rates to bananas moving through New Orleans to El Paso, Tex. The tariffs there interpreted were either identical or analagous to those involved in this case. G., H. & S. A., tariff, I. C. C., 674, was an issue in both cases and may be taken as representative of the other tariffs. On its title-page it reads:

Class and commodity rates on import traffic from New Orleans, La., Galveston and Texas City, Tex., to Texas points named herein.

Item 4 of this tariff reads:

Application of rates from shipside. To obtain class and commodity rates from shipside, Galveston, Texas City, and New Orleans, add wharfage rates shown in Item No. 116 to those shown in Items Nos. 9, 11 to 89, and 93 to 110.

Item 116, under the head of bananas and plantains, names wharfage charge of one-half cent per bunch to be added to rates shown in items Nos. 9, 11 to 89 and 93 to 110, to make through rates from shipside, New Orleans, Galveston, or Texas City, Tex., to destination. The defendants in the *Payne* case, as well as the defendants in the present case, contended that the bananas did not move from shipside, and that they were not import traffic within the meaning of that phrase as used in the tariff. The Commission said:

As has already been noted, the bananas pass to the possession of the Fruit Dispatch Company on arrival at New Orleans and are forwarded by rail under bills of lading executed there. They are not moved by the rail carriers "from shipside."

Other tariffs with the same or similar provisions were examined and the Commission found that the import rate was not lawfully applicable to shipments of bananas through New Orleans to El Paso. At the hearing counsel for complainants attempted to meet the defendants pleas of *res adjudicata* and *stare decisis* by stating that the parties to the case were not the same, the points of destination were different, and the Commission was not fully advised in the former case. We are unable to see anything in these contentions, as no evidence was introduced which can differentiate at least the principle of this portion of the present case from that of *D. M. Payne*. In cases before this Commission involving rates, neither the plea of *res adjudicata* nor *stare decisis* as used at common law has any standing as affecting shipments moving subsequent to the decision of the Commission relied upon; but the shipments upon which reparation is here sought moved prior to the decision in the *Payne* case, were identical to those in that case, and involved the same or identical tariffs. We have already construed those tariffs and can but adhere to our former construction and find that the rate of 42 cents per 100 pounds

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on import traffic had no application to complainants' shipments of bananas through New Orleans to Texas common points and the reparation sought in that connection must be denied.

As to the reasonableness of the rate now in effect: For more than eight years the rate on bananas from New Orleans to Texas common points has been 72 cents, this being the local Class-A rate up to the latter part of 1908. For a short period the rate was 78 cents, due to an advance in the Class-A rate. However, bananas were then given a commodity rate of 72 cents, the old Class-A rate, the result being that bananas were rated at 6 cents lower than Class A. This adjustment and rate still obtain. In a few instances a rate of 42 cents was collected, but this appears to have resulted from mistake as the undercharge was collected when the error was discovered. The 72-cent rate passed unchallenged until the *Payne case*, where, on account of a somewhat ambiguous tariff issue, it was sought to apply the lower import rate. This ambiguity was removed as soon as the contention arose and the 72-cent rate was made unequivocally applicable. No diminution resulted in the volume of banana traffic. It is also well to note that no claim for reparation is made on other than shipments moving during the interim when the aforesaid 42-cent rate was contended for. A quotation from the record illustrates:

Commissioner COCKRELL. Do you include in your statement of claims any claims based upon the theory that this rate was unreasonable and unjust and ought not to have exceeded the 42-cent rate?

Mr. DILLARD. No, sir; our claim for reparation is based simply and exclusively upon our understanding of the rates as laid down in those tariffs during the stipulated periods of time I have referred to.

Mr. COWAN. But we do not mean to waive the claim to reparation which we might be entitled to if the Commission holds the rate to be unreasonable.

It would therefore appear that the reasonableness of the 72-cent rate, now effective, and its reduction were, at most, matters of secondary consideration with complainants.

To prove their contention as to the unreasonableness of this rate, complainants offered voluminous exhibits, comparing the rates to Texas common points with the rates to sundry other points, the local with the import rates, and the rates on bananas with the rates on other fruits and vegetables. New Orleans and Galveston are both seaports and are naturally competitive points. On traffic moving from Europe the ocean rate is the same to either port. It is necessary, therefore, for the rail carriers who serve only New Orleans to make their rates equal those in effect via the lines serving Galveston. On sundry commodities imported through either port the rates to Texas common points are the same. On bananas, however, there is a difference, due to the fact that no Central American bananas move through Galveston, the bananas there imported being of Mexican

origin. The consumption of Mexican bananas in the United States is shown to be about 5 per cent of that of the Central American product. The Mexican banana is inferior, its movement through Galveston is not nearly sufficient to supply the Texas markets, and it really does not compete with the Central American fruit. The local and import rates from Galveston are the same, the only difference in the charges being for wharfage on imports. A rate of 42 cents applies to common points from Galveston, and it is for this reason, among others, that complainants seek to have a similar rate from New Orleans. This 42-cent rate, however, was established by order of the Texas railroad commission and is claimed by defendants to be unreasonably low. Inasmuch as it was not voluntarily established, and as there is no feature of banana competition between the two ports, the Galveston rate affords little value for comparative purposes. The average distance from Galveston to common points is from 200 to 300 miles less than from New Orleans.

As compared with the rates on peaches, plums, apples, cabbages, etc., complainants allege a discrimination against bananas. Bananas are of a highly perishable nature, have to be moved in refrigerator cars, either iced or ventilated, which must be equipped with slats, bulkheads, false floors, etc., and moved with practically passenger-train dispatch, and must have a messenger or messengers in charge who are returned free on regular passenger trains. In the case of *Topeka Banana Dealers Asso. v. St. L. & S. F. R. R. Co.*, *supra*, where the reasonableness of banana rates from New Orleans to Kansas City, Mo., and adjacent points was in issue, the complainants offered comparison of the banana rates with rates on peaches and tomatoes. The Commission said:

We are unwilling to concede that a traffic which demands a special service in point of train speed should justly be compared with a traffic which is not given such consideration. Other perishable fruits and vegetables are carried in refrigerator cars under ice, for which the shipper pays. And it would appear unfair to compare these two classes of service. At least we can not hold that a carrier which gives an expedited service to a perishable commodity carried without refrigeration may be required to extend the same rate to such commodity as is given to perishable freight carried on a slower schedule in cars supplied with ice, for it is to be remembered that these trains which move out of Memphis to the west are given more rapid movement than any other freight trains in that territory, and the Frisco Line is under agreement to make this special time whenever the Illinois Central turns over to it at Memphis as many as six cars.

Furthermore, confining the comparison to Texas points, it might be well to state that the rate on peaches, pears, and pineapples from New Orleans to Texas common points is the Class-A rate of 78 cents, while on bananas a commodity rate of 72 cents is in effect. In other

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words, bananas are favored to the extent of 6 cents per 100 pounds, rather than discriminated against.

As to complainant's exhibits showing rates to other points, east and west of and on the Mississippi River, there is nothing to show that the adjustment discriminates against Texas points. To points on the Mississippi River and east thereof the rates from New Orleans are lower than from Galveston. To the points between the Missouri and the Mississippi rivers, Arkansas, for example, the rates are about the same. To points west of the Missouri the rates are lower from Galveston than from New Orleans, but that territory is geographically nearer to Galveston. To points in Kansas the rates on bananas are generally 10 cents lower from Galveston than from New Orleans, the mileage being about 100 to 150 miles in favor of Galveston. In the case of Texas, the points are anywhere from 200 to 350 miles nearer to Galveston than to New Orleans and, generally speaking, the rates from Galveston are about 23 cents lower.

An examination of S. W. L. tariff, I. C. C., 595, effective June 1, 1909, shows that on bananas the rate, starting immediately north of the Texas line, on the Frisco, Missouri, Kansas & Texas, and Santa Fe, is 74 cents, which is 2 cents higher than the Texas rate. That rate applies to the first three or four stations for a distance of 20 or 25 miles from the Red River. Then the rate becomes 80 cents, which is carried to all stations on these lines across Oklahoma to the Kansas line while the Class-A rate to the same stations is 74 cents, the Banana rate being 6 cents higher than Class A. It will therefore be seen that if we can recognize these adjustments between the banana and the other rates, where bananas are 6 cents higher than Class A, the fact that they are 6 cents lower than Class A in Texas, when the Class-A rate is not assailed as unreasonable, is indicative at least of nondiscrimination against Texas points as far as banana rates are concerned.

In the *Payne case*, *supra*, the Commission held that the rate of 82 cents on bananas from New Orleans to El Paso was not shown to be unreasonable. In the *Topeka Banana Dealers Asso. case*, *supra*, it was held that a rate of 73 cents from New Orleans to Iola and Parsons, Kans., for hauls of 821 and 819 miles, respectively, was not unreasonable. Fort Worth is in common-point territory and is 866 miles distant from New Orleans, the 72-cent rate applying.

An examination of all these comparisons leads us to the conclusion that no discrimination exists as against bananas or as against Texas points.

The final question is whether the rate is unreasonable in and of itself. The average distance from New Orleans to Texas common points is nearly 600 miles, but complainants have used Waco as a

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representative point, that city being 547 miles from New Orleans, and on that mileage, at a rate of 72 cents, the revenue per ton per mile is 2.63 cents, whereas at the 600-miles average it is 2.4 cents. The average revenue per ton per mile on bananas from New Orleans to points in Illinois, Iowa, Missouri, and Kansas is shown in complainants' exhibits to be 1.5 cents. The record shows, however, that the banana movement to these other points is entirely different from that to Texas in that solid trainloads move to the north while there is never a trainload sent to Texas, seldom more than four or five cars moving at one time. Furthermore, the movement into Texas from New Orleans is over several lines of railway, each of which seldom gets more than a hundred-mile haul. The trains out of New Orleans to northern points are made up entirely of bananas, sometimes as many as four or five trainloads moving out in a day. Most of the banana dealers who testified at the hearing stated that they bought on an average of one car a week each. As no solid trains move into Texas, the cars thus loaded are placed in trains made up of other freight. This, rather than retarding the movement of the bananas, accelerates the transportation of the other commodities in the train, the testimony showing that with even one carload of bananas in a train, such train must be run the same as if it were made up solidly of bananas. Furthermore, most of the refrigerators are returned empty, as there is no suitable freight with which they can be loaded back from Texas points to New Orleans. Needless to say, this comparatively light movement and the conditions incident thereto, together with the expense attendant thereupon, renders the cost of transportation of bananas to Texas points from New Orleans materially higher than to the other points enumerated.

Considering all the facts, circumstances, and conditions, we are of the opinion and so hold, that the rate of 72 cents per 100 pounds on bananas from New Orleans to Texas common points is not shown to be either unreasonable or discriminatory, and the complaint will be dismissed.

An order in accordance with these findings will be issued.

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No. 2669.
STANLEY NEWDING
v.
MISSOURI, KANSAS & TEXAS RAILWAY COMPANY
ET AL.

Submitted March 31, 1910. Decided June 3, 1910.

Rate on second-hand beer bottles from St. Louis, Mo., to San Antonio, Tex.,
found unreasonable and reparation awarded.

Albert E. Heilbron for complainant.
J. W. Allen for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant shipped a carload of second-hand beer bottles from St. Louis, Mo., to San Antonio, Tex., on March 31, 1909, upon which he was charged a rate of 62 cents per 100 pounds upon a minimum weight of 30,000 pounds, or a total of \$186. It is claimed that the rate was unjust and unreasonable in so far as it exceeded 33 cents per 100 pounds. Reparation is prayed for, and also the establishment of a rate for the future.

At the time the shipment moved there was in effect a rate on junk, including junk bottles, from San Antonio to St. Louis of 33 cents. The complainant had made a shipment under this rate shortly before the making of the shipment involved and was informed by the agent of the defendant that the same rate applied from St. Louis to San Antonio. He paid for these bottles in St. Louis 20 cents per dozen and sold them in San Antonio for 32 cents per dozen. At a rate of 33 cents the freight would amount to 8 cents per dozen, leaving a profit of 4 cents, while at the published rate the transaction involved a loss.

That the complainant was quoted an erroneous rate and actually made shipment relying upon that as the correct rate is immaterial. We can only inquire what rate was at the time of this shipment reasonable and should have been applied to it. As already stated, the
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rate on these bottles from San Antonio to St. Louis would have been 33 cents. There was then in effect a rate on empty bottles returned from Texas points to breweries in St. Louis of $21\frac{1}{2}$ cents, minimum 20,000 pounds.

We are of the opinion, and find, that the rate charged the complainant was unreasonable; that it ought not to have exceeded 33 cents per 100 pounds, and that the complainant is entitled to reparation in the sum of \$87, with interest from April 7, 1909. We are further of the opinion that the rate on this commodity, minimum 30,000 pounds, ought not to exceed for the future 33 cents per 100 pounds from St. Louis to San Antonio.

An order will be issued accordingly.



No. 2827.

M. MOSSON COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted April 1, 1910. Decided June 10, 1910.

Complainant, a dealer in lumber at Brooklyn, N. Y., has its shipments delivered in the Wallabout Basin within New York lighterage limits. Upon complaint of the unreasonable and prejudicial nature of defendant's lighterage rules as applied to Wallabout Basin; *Held*, That defendant's rules are not found to be unreasonable or unduly discriminatory. Complaint dismissed.

Richard J. Donovan for complainant.

George Stuart Patterson for defendant.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

Complainant is a corporation engaged in the lumber business in Brooklyn, N. Y., and it has about two-thirds of its inbound shipments delivered at the Wallabout Basin, within the lighterage limits of New York Harbor. The substance of the complaint is that lumber shipments consigned "New York, lighterage free," are unduly

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delayed after arrival of the cars in Jersey City; that defendant enforces an unreasonable and unduly prejudicial rule in its requirement that upon notification of the arrival of such cars the consignee shall specify a particular lighterage destination, and upon the arrival of the lighter at such destination provide a dock berth for such lighter; that, after the consignee has indicated a pier destination, in case that pier is fully occupied when the lighter arrives the servants of the carrier will not make delivery at adjacent unoccupied piers; and that the result of these regulations and practices is damage to the complainant by reason of delay of its consignments and of the unreasonable imposition of demurrage charges.

This case involves the lighterage rules in New York Harbor. Complainant is mainly interested in the application of those rules in the Wallabout Basin, but the evidence is not convincing that the situation with respect to pier space and the conditions of lighterage are so different there that special rules should be established applicable only to that particular portion of New York Harbor.

The free lighterage and floatage limits of New York Harbor extend on the New Jersey side of the North River from the National Storage Docks, Communipaw, to and including Fort Lee, N. J. On the New York side they extend from One hundred and thirty-fifth street, on the north, to the Battery. On the East and Harlem rivers they extend from the Battery to Jerome Avenue Bridge, including the Harlem River side of Wards and Randalls islands. On the Brooklyn side these limits extend from Pot Cove, Astoria, to and including Newtown and Dutch-Kills creeks and points in Wallabout Canal west of Washington Avenue Bridge; to Hamilton Avenue Bridge, Gowanus Canal, and to and including Sixty-ninth street, south Brooklyn. In New York Bay these limits include points on the north and east shore of Staten Island between Bridge Creek (Arlington) and Clifton, both inclusive, and including Shooter Island. On the New Jersey shore of New York Bay and on the Kill von Kull these limits include points between Constable Hook and Avenue C, Bayonne City, opposite Port Richmond, Staten Island.

The maximum haul from the New Jersey terminals of defendant at Harsimus Cove to points within these lighterage limits is about 15 miles. Within these limits the flat rate to New York applies to all package and bulk freight. Package freight goes to the pier terminal warehouses of the carrier, and carload or bulk freight is delivered free at any pier indicated by the consignee. In addition to these pier deliveries consignees are entitled to demand track deliveries in New York City or in Brooklyn, and upon request deliveries are made at certain points beyond the lighterage limits at an additional

charge for towage. The lighterage rules of defendant are similar to the regulations of the other lines touching New York Harbor and are substantially the same as are in force at Philadelphia and Baltimore.

The particular rule to which complainant makes objection is as follows:

When a car float, lighter, or barge reports at its destination, the shipper, consignee, or steamship company must provide a berth, and two days (forty-eight hours) from the time the car float, lighter, or barge reports (Sundays and holidays excepted) shall be deemed lay days, without charge, after which demurrage shall accrue at the following rates per day (of twenty-four hours) or fraction thereof:

Car floats	\$25
Steam holsting barges	20
Other lighters or barges	10

This demurrage rule applies to all lighterage services on all bulk freight, and at all possible destinations within the harbor. The actual practice with respect to lumber is as follows: When the car is received at Jersey City it is run out to the yards in the Meadows and notification of its arrival is sent to the consignee. Within forty-eight hours of such notification the consignee is required to designate to defendant a pier destination. When this instruction has been furnished the car is switched to defendant's docks at Harsimus Cove and the lumber is transferred from the car to the lighter, barge, or boat for delivery. The testimony indicates that the average loading of these lighters is from four to five carloads of lumber, but that occasionally as much as ten carloads may be lightered in one barge. As soon as practicable the lighter is towed to the pier named by the consignee, and on arrival at that pier the consignee is expected to provide a berth for the lighter. Ordinarily the consignee has no leasehold of the pier or berth and the carrier pays for the use of the public berth selected by the consignee, making delivery of the lumber free of all charge across the stringpiece of the pier.

The public berths within the free lighterage limits of New York Harbor are only 329 in number, and about 3,600 boats, excluding steamers and schooners, are engaged in making deliveries within the harbor. Many of these boats, barges, or lighters are engaged in delivery at private or leased berths and piers, but the congested condition of the harbor results in frequent crowding of the berths on the public piers. When a lumber lighter arrives at a crowded pier and finds no berth available the consignee is notified and the lighter is tied to the dock. As soon as a berth becomes available the lighter is warped or hauled into the berth thus secured. The free time begins to run from the time the lighter is tied to the dock or pier designated by the consignee, and personal notice is given such consignee

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at once. There is some evidence to the effect that occasionally lumber is unloaded by crossing boats or lighters which lie between the lumber lighter and the pier, but as this practice depends upon the willingness on the part of the captain of the intermediate boat to cooperate it need not be here considered.

This complainant contends that it should be allowed to designate piers of delivery in the alternative. In other words, that it should be allowed to say "deliver car No. — at either Pier 1 or 4, Wallabout Basin." Pier 1 contains 9 public berths and is near the entrance to the basin. Pier 4 is about 650 feet farther in the basin and is separated from Pier 1 by the package freight piers of the Pennsylvania and New York Central railroads, which occupy piers 2 and 3, respectively. Pier 4 has only 2 public berths and pier 5, about 170 feet farther in the basin, has 6 public berths. The effect of an alternative delivery order would be, in case both piers were fully occupied, to impose upon the carrier the duty of determining at which pier it could earliest obtain a berth, and, in order to avoid disputes, of keeping a tug there to shift lighters from pier to pier as the situation changed.

If the obligation were imposed upon the carrier to find a berth before the free time began to run against the consignee, it would be possible for consignees who desired storage of their shipments to regularly designate the more congested piers and thereby obtain the use of the carrier's equipment. The present practice of consigning lumber "New York, lighterage free" is of value to the consignee in that it enables him to find a purchaser while the car is en route or before ultimate delivery.

Another feature of this case, which we do not think it necessary to consider at length, is delay to certain specified shipments. The testimony of complainant's witnesses and the records of the defendant produced at the hearing conflict as to the actual detention of these shipments, and with respect to at least one shipment the matter is complicated by the fact that it was an "order notify" shipment, for which the complainant did not have the bill of lading.

Upon consideration of all the facts in this case we do not find that the rules and regulations of the defendant are unreasonable, unjust, or unduly prejudicial to this complainant, and it follows that the complaint must be dismissed.

It will be so ordered.

No. 1179.
NATIONAL HAY ASSOCIATION
v.
MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted May 14, 1910. Decided June 10, 1910.

Complaint as to increase in classification, and resulting increase in rates, applicable to hay and straw in Official Classification territory. Defendants answered and pleaded *res judicata*; *Held*:

1. That in rate matters the plea of *res judicata* is only valid as to what preceded the final decree of the court or the final order of this Commission; it can not apply to present rates.
2. That the fifth class rates on hay and straw are not now unreasonable or discriminatory and that the case should be dismissed.

James Manahan and C. S. Bash for complainant.
Adelbert Moot and O. E. Butterfield for defendants.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complainant is an incorporated association of persons engaged in the production and distribution of hay. The defendants are 29 of the principal carriers operating east of the Mississippi River and north of the Ohio and Potomac rivers, in the territory governed by the Official Classification. The substance of the complaint is that the rates collected by the defendants for the transportation of hay and straw under such Official Classification are excessive and unreasonable for the services performed, and subject these particular descriptions of traffic to undue and unreasonable prejudice or disadvantage as compared with the transportation of similar articles. These charges are based upon the fact that on January 1, 1900, the defendants, by means of the publication and filing of Official Classification No. 20, changed the classification of hay and straw from the sixth class, where it had formerly been, to the fifth class. This higher classification, which resulted in higher rates, has been maintained continuously ever since. The complaint specifies no particular rate between any designated points as unjust, unreasonable or unduly prejudicial to hay and straw, but is addressed to all the rates on

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these commodities throughout Official Classification territory, having particular reference to the rates from the middle states eastbound to Philadelphia, New York, and Boston points.

Underlying the allegations of the complaint is the well-known fact that the rates eastbound throughout this territory are based upon the Chicago-New York rates, which are, and for more than twenty years have been, 25 cents sixth class and 30 cents fifth class. From other points the rates are adjusted with respect to the Chicago-New York rates by means of percentages. The allegation of the eighth paragraph of the complaint based upon this situation is as follows:

The advance in the charges enforced by the defendants for the transportation of hay and straw occasioned by changing these commodities from the sixth to the fifth class, January 1, 1900, amounts to an increase in the rate between New York and Chicago of \$1 per ton and to an average advance in the rates charged and collected for these commodities by the defendants in the Official Classification territory of approximately 80 cents per ton.

This is the nearest approach to a statement of a rate contained in the complaint, and is a mere general statement of the rate situation in view of the undisputed fact that practically no hay ever moves from Chicago to New York. The complaint, therefore, is essentially one addressed to the classification of hay and straw in the territory named in so far as such classification involves the rates on these commodities without regard to the direction in which they may move or the particular points of origin and destination between which the traffic may be carried.

In the ninth paragraph of the complaint the rates charged on hay and straw within Official Classification territory are alleged to be unjust and unreasonable and to subject all producers, merchants, shippers, and consumers of hay and straw, and the traffic itself in these commodities and the localities producing and consuming the same, to unjust discrimination and undue and unreasonable prejudice and disadvantage. There is a further allegation of undue discrimination on the part of the defendants in favor of Canadian hay to the prejudice of American hay.

The prayers are that the defendants be required to cease and desist from these violations of the act; to cease and desist from enforcing the aforesaid unlawful rates on hay and straw; to cease and desist from further undue discrimination against the traffic in hay and straw to the unreasonable prejudice of those engaged in the production, shipment, and sale thereof by keeping these commodities in the fifth class of said Official Classification instead of the sixth class thereof, from which the same were unlawfully and unjustly removed; that the Commission prescribe such maximum rates and such classification for the transportation of hay and straw in the territory gov-

erned by the Official Classification as after full hearing it may deem just and reasonable; and for further relief.

To this complaint the defendants answered, admitting the change in classification on hay and straw from sixth class to fifth class, but denying that such change resulted in an average advance of 80 cents per ton, or that it was arbitrarily made, or that it worked wrongful discrimination, or that the rates collected thereunder are excessive, unreasonable, or otherwise unjust in violation of the act as charged. In further justification of the advance these answers set forth that the former classification of hay and straw in the sixth class was improper and resulted in unduly low car earnings and that the advance in classification had been under consideration by the carriers for six years prior to 1900.

Further answering the defendants say as follows:

That the matters set up in the bill of complaint in the case at bar and in issue in this proceeding have already been determined and passed upon in a proceeding involving the same parties and the same subject-matter, and that the same therefore can not be again inquired into by this honorable Commission in this proceeding.

The basis for this plea of *res judicata* is the fact that on October 16, 1902, in a proceeding entitled *National Hay Asso. v. L. S. & M. S. Ry. Co.*, 9 I. C. C. Rep., 264, this Commission decided a complaint brought by this same association against practically these same defendants concerning this very subject-matter, and thereupon ordered the defendants to desist from charging fifth class rates upon hay and straw and required them to apply sixth class rates thereon, which order was not obeyed by the defendants. Thereafter this Commission filed a bill in the United States Circuit Court for the Northern District of Ohio, Eastern Division, against four of the said original defendant railroad companies to enforce its order. Most of the other railroad companies, defendants to the original petition, intervened as defendants, and thereafter on January 7, 1905, the court entered a decree dismissing the bill of complaint, which decree was affirmed on appeal by a divided court in the Supreme Court of the United States on May 21, 1906. The history of this prior case is to be found in 9 I. C. C. Rep., 264; 134 Fed. Rep., 942; and 202 U. S., 613.

It is not necessary to set forth at large the opinion of the Circuit Court in dismissing the Commission's bill. It is sufficient to state that the decree of dismissal was final and was founded mainly upon the fact that the Commission had no power at that time to fix rates for the future. Thereafter, on August 28, 1906, the Hepburn amendment to the act to regulate commerce became law, and gave the Commission the power after full investigation upon complaint to establish maximum rates for the future. This complaint was filed about a year after the Hepburn Act.

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Before discussing the facts disclosed by the evidence it may be well to note the objections urged by the defendants to the jurisdiction of the Commission in the present proceeding.

The first objection is that the subject-matter of this case was heretofore in issue between substantially the same parties, and that upon a hearing *de novo* in the circuit court the decree entered therein is binding upon the complainant and the Commission. This objection is equivalent to a plea of *res judicata* and is perfectly valid as to all that preceded the effective date of the Hepburn Act, August 28, 1906. Since that date the Commission has had authority to fix rates for the future, and the present complaint having been filed since that date, the reasonableness of the present rates on hay and straw and their propriety for the future are clearly within our jurisdiction, regardless of the action of the court upon the former order of the Commission, or with respect to the rates preceding the final order of the court. The Congress, in giving the Commission power "to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged," placed this limitation upon the effect of the Commission's orders, that the same "shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction," thereby declaring it to be the judgment of the legislature that even the orders of this Commission with respect to rates should not be conclusive beyond a period of two years. Congress, going further, left the door open to the Commission to suspend or modify or set aside any such order as to rates at any time within the two years. It ought to be perfectly apparent that rates which are reasonable at the present time may within the period of two years become very unreasonable, by reason of changes in circumstances and conditions, economic, transportation, or the like. It should be just as apparent that a rate which was unreasonable two years or more ago may become reasonable by reason of such changes in conditions.

We think the plea of estoppel by reason of former adjudication is not good in so far as the present rates on these articles are concerned, and we so hold although the decree of the court in the former case was a general finding for the defendants on all the issues of fact.

The second objection to the jurisdiction of the Commission is that the Commission is without power over classification matters. To this objection the complete answer is that while the case was brought and tried in form as a matter of classification, as a matter of substance it is clearly and undeniably a rate case.

Without deciding whether we have or have not jurisdiction over matters that apply solely to classification, we hold that where the

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classification primarily effects and controls the rates or charges demanded, charged, or collected by any common carrier or carriers, subject to the provisions of the act, for the transportation of property as defined in the first section of the act, or publishes the regulations or practices of such carrier or carriers affecting such rates that this Commission is authorized and empowered, and that it is its duty after full hearing upon a complaint made as provided in section 13 of the act, and as stated in this case, to pass upon such rates or charges, or such regulations or practices affecting such rates. Nor do we think the contention of the defendants sound that the complaint in this case is not such a complaint as provided in section 13 of the act. This complaint does allege a thing done by certain common carriers subject to the provisions of the act in contravention of the provisions thereof—the charging of rates which are unjust, unreasonable, and unduly discriminatory. The thing done, by means of the change in classification, as a matter of law, and as a matter of fact, was the imposition thereby of higher rates upon hay and straw.

The complaint is addressed to the advance in rates on hay and straw. This report will deal primarily with hay, as the testimony with respect to straw is exceedingly limited. Straw as a by-product of grain raising is of very low commercial value, and except when moved on commodity rates and for short distances never entered into transportation to any material extent.

Prairie hay was named in the old case. The evidence in the present record, however, indicates that prairie hay, as an article of commerce, has practically ceased to exist in the states of Illinois, Indiana, Ohio, and Michigan. There is still a little prairie hay gathered, but it is inconsiderable in amount, of very low value, and is either used locally or shipped to near-by points, like Chicago and Peoria, for packing purposes.

Hay is produced very generally throughout this country, the larger portion of it being consumed either upon the farm or within wagon haul of where it is grown. Notwithstanding this fact, the tonnage of hay transported by the rail carriers is enormous. For the purposes of such transportation the carriers recognize no grades or distinctions in the commodity; but in commerce hay is graded as to kind, such as timothy, clover, mixed, or as the fact may be, as well as with respect to quality. The hay considered in this report is limited by the evidence to the various grades and mixtures of timothy, or timothy and clover.

The farm values of hay of the same grade vary with the proximity of the points of production to the points of consumption, the average values for all of the eastern states being very much higher than for those of the middle west; there is also a variation in the farm values

of hay due to the fact that in some sections, notably in Michigan and some of the eastern states, very large quantities of very high grades of hay are produced. The farm value also fluctuates with the local rainfall, and consequent local abundance of crops. The average farm price of hay in Michigan for nine years prior to the change in classification was \$9.16 per ton, whereas the average farm value for the nine years succeeding the change in freight classification was \$9.29 per ton. The extreme range in the prices of Michigan hay on the farm for nine years prior to 1900 was from \$7.15 per ton to \$13 per ton, whereas the extreme range since 1900 has been from \$8.30 per ton to \$12.50 per ton.

Complainants contend that by the change in the classification of hay from the sixth to the fifth class the relationship formerly existing between the rates charged by the carriers on grain and grain products, and the rates on hay, was changed to the undue prejudice and disadvantage of hay. The fact is that since the change in the classification and rates on hay, the actual rates charged for the transportation of grain and grain products have also been advanced, so that the change in relationship as to rates, upon which so much reliance was had in their first complaint, has now disappeared (9 I. C. C. Rep., 382). It is true that hay and some grains, or grain products, do compete for the feeding of horses and other live stock, so that where hay is abundant, and therefore very cheap, and grain is scarce, and therefore very high, a larger amount of hay is fed in proportion to grain. The converse is also true.

One of the contentions made by the complainant throughout the case is succinctly stated in its brief in these words:

Hay has to be grown by the farmers to a large extent regardless of profits in order to rotate the crops, conserve the soil, and utilize the time at the farmer's disposal. Hay is necessary as a universal food for horses in order to keep them in the best physical condition. Hay, therefore, has to move over the railroads to a certain extent regardless of the rate. These facts enable the carriers to collect unreasonable rates for the transportation of this commodity.

An analysis of this statement may be helpful. As the statistics incorporated herein will show, the production of hay in the four middle states, the states most directly concerned in this inquiry, has not only grown phenomenally since the increased rates on hay went into effect, but during all this period the value of the crop per acre has been greater for hay than for any of the grains save corn, and, occasionally, wheat; and it results therefore that the increased acreage of hay in these states was the result of wise economic foresight on the part of the farmers and that hay was grown because of the profits resulting therefrom, not solely for the rotation of crops or because the farmers were under any necessity other than that arising from commercial conditions.

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With respect to timothy hay, which is meant wherever hay is spoken of in this report, its cultivation does not conserve the soil, except in so far as it prevents the land from washing, but is more destructive to the land than the raising of wheat. The reason for this is that the roots of timothy do not strike as deep into the soil as the roots of wheat and the top surface is more speedily and completely robbed of its nutrition by timothy than it is by wheat. It is true that the growing of hay is of advantage to the farmer in the rotation of his crops, and that in most sections the working and harvesting of the crops are well balanced when hay is cultivated along with small grains, the roots and corn. The statement that hay is necessary as a universal food for horses in order to keep them in the best physical condition must be understood as subject to the other contention of the complainant, that the grains and some grain products are highly competitive with hay for horse feed. It is not true that hay has to move over the railroads to any extent regardless of the rate; the fact appearing to be that hay, like all other commodities, moves from the points of production to the points of consumption under the ordinary laws of supply and demand and is not governed abnormally by the freight rate charged thereon.

The changed classification effective January 1, 1900, as well as the higher rates resulting therefrom, have been tested by actual experience for fully ten years. An examination of the present prices for hay, the area of farm lands devoted to its raising, the movements of the commodity, and the relative returns from the cultivation of hay and from the cultivation of the various grains, may be useful as showing something of the true situation with respect to the commodity and the rates applied thereto.

The evidence produced on behalf of the complainant was in large part, and very properly, from witnesses who are members of the complainant organization. So far as that evidence was addressed to the effect of the increased rates on the cultivation and transportation of hay, it was confusing as to the real situation. The president of the National Hay Association, who ships hay from Green Springs, Ohio, testified that his shipments prior to the change in classification were mainly to the east, and that no change has occurred in such direction of shipments in the ten succeeding years. This witness ships mainly to New York and Boston rate points. The rate from Green Springs is 78 per cent of the Chicago-New York rate, or 23½ cents to New York rate points, and 26½ cents per 100 pounds to Boston rate points, and it will be seen that the increase so far as Green Springs itself is concerned amounted to 78 cents per ton. Notwithstanding this situation, and notwithstanding that his rate to St. Louis is 19 cents and the rate to the southern hay markets is approximately the

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same as from other points in Central Freight Association territory, this witness ships almost entirely to the east, his business varying from 200 to 400 cars per annum. Most of the hay dealt in by this witness comes, however, not from Green Springs proper, but from points in western Ohio that take a higher rate, some of them a rate of 25 cents per 100 pounds to New York. Notwithstanding the fact that this witness has maintained his business connections in the east uninterrupted for eleven years, at one time he had a lower grade of hay than that demanded in the east and shipped between 100 and 150 cars to the south and west.

Other witnesses testified, and showed from extracts from their books of account, that beginning with the year 1900 they had ceased shipping to the east, and that since then their shipments had gone either exclusively, or in very much increased proportions, to destinations in the south and southeast. Other witnesses, who, in addition to being hay dealers, are also farmers of large tracts of land, testified to the effect that in the last few years they have restricted the areas devoted to hay raising and have increased the areas devoted to the cultivation of corn and small grains. They further testified that the hay now raised by them or bought from other farmers for distribution was shipped either to Chicago, St. Louis, New Orleans, or southwestern markets. The deduction sought to be drawn from this testimony was that throughout Illinois, Indiana, Ohio, and Michigan the increase in freight rates toward the east had been effective in reducing the area of land devoted to hay culture and in diverting the major portion of such hay as might be raised to interior and southern markets.

The facts seem to be that prior to 1900 more low-grade hay did move toward the east than has moved since that date, but it is exceedingly doubtful from this record whether the total movement of hay from these four middle states has been decreased at all. At the present time high-grade timothy hay, loosely baled, and therefore attractive to the eastern buyer, does move freely from Michigan, Indiana, and Ohio. It seems to be equally certain that low grades of hay are more acceptable in the Mississippi Valley and through southeastern territory, and that such lower grades of hay bring very much higher prices in interior points and southern markets than in the east.

The price of hay per ton is of little help in determining its value to the farmer unless the amount raised per acre be taken into consideration. The evidence is conclusive that the yield per acre follows closely the rainfall in the critical month of May east of the Mississippi and along the fortieth parallel. The evidence is also conclusive that the farm price per ton of hay is inversely proportional to the yield per acre. It follows therefore that the yield per acre and price per ton,

varying as they do with climatic conditions, the essential thing, so far as the farmer is concerned, is the value per acre and not the price per ton either upon the farm or in the market of ultimate consumption. The evidence having been directed mainly to the hay situation in the four States of Ohio, Indiana, Illinois, and Michigan, we have compiled with great care the statistics furnished by the United States Department of Agriculture to determine the average farm value of hay per acre in those four states and to compare such average farm value from year to year with the average farm values per acre of wheat, corn, oats, and rye. We have gone further than this. We have added a comparison of the average farm value of these four grains per acre with the average farm value of hay in these four states. The result of this examination is presented in the following table:

Average farm value of hay, wheat, corn, oats, and rye per acre in the four states of Ohio, Indiana, Illinois, and Michigan.

	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.	1909.
Hay.....	\$10.61	\$11.59	\$11.65	\$12.15	\$12.06	\$12.08	\$11.37	\$12.47	\$16.07	\$12.94	\$14.87
Wheat.....	6.78	5.38	10.48	11.45	9.25	11.72	14.15	12.06	14.13	15.64	17.01
Corn.....	9.86	12.47	13.98	14.22	12.22	14.24	15.69	15.04	16.65	20.20	19.89
Oats.....	8.56	8.92	11.58	11.70	9.58	10.94	10.32	9.78	9.09	12.07	12.19
Rye.....	7.34	7.94	8.49	8.57	8.01	10.95	10.16	9.77	12.18	11.78	11.44
Average of 4 grains.	8.14	8.08	11.13	11.51	10.02	11.94	12.58	11.89	12.16	14.89	15.61

From this table it appears that in 1899 hay was a better average crop in the four states named than any of the grains; that in 1900 to 1904, inclusive, hay was a more valuable crop than any grain other than corn; that in 1905 the average farm value of hay per acre was higher than oats or rye, but lower than either wheat or corn; that in 1906 and 1907 hay yielded higher returns per acre than any of the grains with the exception of corn, and that in the years 1908-9, hay was more remunerative per acre than oats or rye, but yielded something less than either wheat or corn. Comparing the average value of hay per acre with the average values of the four grains per acre, this table shows that with the exception of the three years, 1905, 1908, and 1909, hay was the more valuable crop. It is evident therefore that in Ohio, Indiana, Illinois, and Michigan, during all the period from 1900 down to date, the value of hay on the farm has not been destroyed by unreasonable freight rates, nor has hay as a commodity been so discriminated against in comparison with the grains as to render it unprofitable as a farm product.

This deduction as to the value of hay per acre on the farm in the four states named is of greater value when considered with other facts shown by the same agricultural statistics.

In the following table will be found a comparison from the statistics published by the Department of Agriculture of the United States showing the hay crops of the United States; the hay crops of the middle states, Ohio, Indiana, Illinois, and Michigan; the hay crops of the New England states, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut; and the hay crops of three eastern states, New York, New Jersey, and Pennsylvania, for the years 1895 to 1909, inclusive:

Hay crops of the United States; the middle states, comprising Ohio, Indiana, Illinois, and Michigan; the New England states, comprising Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut; and the three eastern states, New York, New Jersey, and Pennsylvania, for the years 1895 to 1909.

Year.	United States.			Middle States.		
	Acreage.	Production.	Farm value December 1.	Acreage.	Production.	Farm value December 1.
	<i>Acres.</i>	<i>Tons.</i>	<i>Dollars.</i>	<i>Acres.</i>	<i>Tons.</i>	<i>Dollars.</i>
1895.....	44,206,453	47,078,541	393,185,615	6,612,055	4,041,590	47,803,733
1896.....	43,259,756	59,282,158	388,145,614	6,783,260	8,726,743	64,072,641
1897.....	42,426,770	60,664,876	401,390,728	6,924,771	9,722,762	62,818,216
1898.....	42,780,327	66,376,920	398,060,647	6,870,902	9,952,001	60,059,552
1899.....	41,328,462	56,655,756	411,926,187	6,390,178	8,243,160	67,787,379
1900.....	39,132,960	50,110,906	445,538,870	5,942,068	7,163,285	68,611,165
1901.....	39,390,508	50,590,877	506,191,533	9,571,633	11,900,615	111,748,074
1902.....	39,825,327	59,857,576	542,036,364	9,514,425	13,895,663	126,182,665
1903.....	39,933,769	61,305,940	556,376,890	9,500,051	13,800,720	123,878,866
1904.....	39,998,002	60,696,028	529,107,625	9,338,586	12,673,073	112,997,220
1905.....	39,361,960	60,531,611	515,959,794	9,097,208	13,102,093	103,706,736
1906.....	42,476,324	57,145,969	592,539,671	10,513,035	12,066,774	141,803,375
1907.....	44,028,000	63,677,000	743,507,000	10,382,000	14,169,000	166,909,000
1908.....	46,486,000	70,798,000	635,423,000	11,327,000	17,037,000	146,424,000
1909.....	45,744,000	64,938,000	689,345,000	10,490,000	14,651,000	156,030,000

Year.	New England states.			Eastern states.		
	Acreage.	Production.	Farm value December 1.	Acreage.	Production.	Farm value December 1.
	<i>Acres.</i>	<i>Tons.</i>	<i>Dollars.</i>	<i>Acres.</i>	<i>Tons.</i>	<i>Dollars.</i>
1895.....	3,700,777	3,736,612	48,352,088	8,212,374	7,029,057	91,641,760
1896.....	3,476,004	3,863,909	48,340,529	7,195,362	6,602,840	80,840,516
1897.....	3,532,406	4,311,588	48,295,445	7,488,123	10,400,894	90,880,161
1898.....	3,619,216	4,773,994	42,463,386	7,599,319	10,777,617	72,317,393
1899.....	3,561,377	3,555,746	42,015,791	7,305,730	7,924,796	87,631,680
1900.....	3,513,544	3,473,061	48,718,161	6,963,975	6,523,654	92,264,659
1901.....	3,951,110	4,654,627	56,832,138	8,489,310	10,713,570	126,336,654
1902.....	3,960,614	4,857,687	61,080,717	8,525,431	10,909,004	130,236,907
1903.....	3,865,366	4,210,330	53,748,076	8,302,000	10,499,568	127,346,248
1904.....	3,920,140	4,452,984	52,994,883	8,292,914	11,570,375	126,500,256
1905.....	3,908,963	4,668,366	54,961,907	8,209,984	11,215,929	125,667,884
1906.....	3,960,601	4,762,062	58,513,428	8,214,187	10,592,580	135,519,368
1907.....	4,060,000	5,858,000	84,720,000	8,304,000	11,098,000	174,112,000
1908.....	4,045,000	4,195,000	82,852,000	8,319,000	11,093,000	135,945,000
1909.....	4,056,000	4,355,000	71,692,000	8,319,000	9,290,000	134,670,000

Without going into an extended analysis of all these figures it will suffice for the purposes of this report to call attention to a few salient facts which to our minds are conclusive with respect to the hay situation in the four middle states named. The statistics for the entire United States, notwithstanding the changes that have occurred in the country during the period, show that the total areas devoted to

hay raising have varied from 44,000,000 acres in 1895 to 39,000,000 between 1900 and 1905, and that since 1907 up to date the total area devoted to the raising of hay has been 44,000,000 acres and more. If we look at the New England states we find only a slight increase in the areas devoted to hay raising, more than 3½ million acres having been devoted to hay in those states from 1895 until 1907, and that since 1907 until the present time the area has been only slightly above 4,000,000 acres. The eastern states have been fairly persistent in the allotment of about 8,000,000 acres to the raising of hay during the entire period named.

Going back to the middle states, we find a distinctly different situation with respect to the areas devoted to the cultivation of hay. In the four middle states in 1895 more than 6,500,000 acres were in hay cultivation. This area increased from year to year until the years 1899-1900, when a slight decrease in the acreage occurred in the middle states, prior to the change in the rates complained of. Beginning, however, with the year 1901, when the increased rates were in full force and effect, the areas devoted to the cultivation of hay were more than 9,000,000 acres, and since 1901 the increase in acreage in these four states has been phenomenal, the acreage in 1908 having been 11,327,000, and in 1909, 10,490,000 acres. Considering the two tables together, it is impossible to reach any conclusion except that hay not only was one of the most profitable crops for the farmer in Ohio, Indiana, Illinois, and Michigan, but that the farmer knew this to be a fact and raised hay in increasing quantities, and generally at an increasing value per acre to him.

One of the allegations of the complaint is that the increased rates on hay in Official Classification territory, taken in connection with the commodity rates on hay grown in the provinces of Quebec and Ontario, give an undue advantage to Canadian hay and unjustly discriminate against American hay to the damage of the farmers and hay dealers and the commodity itself. The evidence distinctly disproves this claim, and the statistics of the Department of Commerce and Labor show that the charge is not founded in fact. The importations of dutiable hay from Canada, including all British provinces north of the United States, have been as follows:

Year.	Duty.	Tons.	Year.	Duty.	Tons.
1890.....	\$4.00	124,544	1901.....	\$4.00	142,491
1891.....	4.00	85,242	1902.....	4.00	48,289
1892.....	4.00	79,715	1903.....	4.00	292,906
1893.....	2.00	104,257	1904.....	4.00	114,262
1894.....	2.00	85,754	1905.....	4.00	48,123
1895.....	2.00	201,830	1906.....	4.00	68,521
1896.....	2.00	302,644	1907.....	4.00	61,044
1897.....	4.00	119,928	1908.....	4.00	19,029
1898.....	4.00	2,830	1909.....	4.00	6,681
1899.....	4.00	18,837	1910 (ten months).....	4.00	88,194
1900.....	4.00	148,886			

The above table of importations of Canadian hay consumed in the United States shows distinctly that custom duties do affect the importation of Canadian hay, certainly at the beginning of the imposition of such duties, but so far as we are able to understand these statistics, the freight rates have not discriminated at all in favor of Canadian hay, nor have they done away, to any extent, with the burden on such hay due to the custom duties. The inference to be deduced from these statistics, taken in connection with the statistics already given for American hay, would seem to be that Canadian hay for American consumption moves, notwithstanding the customs duty, whenever the amount or quality of the hay produced in sections serving the eastern states falls low enough to attract that hay. No other explanation would seem to be possible for a drop in importations of Canadian hay such as that shown from 1903 to 1909, and no other explanation seems to be possible for the increase in importation in the ten months of the present fiscal year. Something was said in the testimony and at the argument about transit hay from Canada, or hay in bond, passing through the United States, paying no duty, for export from American ports. Such transit hay is ordinarily of rather low grade in quality, is used for feeding cattle exported from the United States to foreign countries, and for recent calendar years has been in the following amounts:

Years.	Tons.
1906.....	17,185
1907.....	32,634
1908.....	4,633
1909.....	26,841
1910 (four months).....	18,743

These amounts are relatively small and such transit hay may therefore be omitted from consideration in this case.

The testimony of a director in the National Hay Association, who is in business at Moravia, N. Y., illustrates the reason for some of this importation of Canadian hay and does away with the charge of discrimination in favor of such hay to the prejudice of the home-grown article. Witness testified that on one occasion, six or seven years ago, he had contracts for the delivery of hay at Boston rate points in the spring; that at that time there was snow on the hills, and the roads were bad in the valleys where he lives, in the central portion of New York; that by reason of these facts he went over into Canada and purchased a few carloads of hay for shipment to Boston; that the result of this transaction was not financially as satisfactory to him as the ordinary course of his business, and that although he went back to Canada on one or two other occasions, his total purchases of Canadian

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hay for shipment into the United States would not exceed 6 cars. This witness was a shrewd, active, business man, managing 1,700 acres of land for himself and handling in the neighborhood of 2,000 cars of hay per annum, and his distinct testimony is that if he had found it to his financial interest he would have bought hay in Canada all the time. This particular witness went further and testified that for shipments to Pennsylvania mining towns he bought hay in Ohio and the west, which shows conclusively that hay moves not solely with respect to the rate applicable to its transportation, but largely according to its grade and quality and the demands of the consuming destinations.

The direction in which hay moves is determined occasionally by weather conditions, resulting in drought in one section and large crops in others. It is in evidence that one of the members of the complainant association at one time shipped hay as far south and west as Texas, the reason for such abnormal movement being a drought in the sections of the country ordinarily supplying that state. Another reason for changes in direction of movement is the growth of the interior cities, and the accompanying change in the direction of the demand, and a further reason is dissatisfaction on the part of the shippers with certain markets. Some of the witnesses testified that they now ship hay to certain points in New England and New York state, which take the Boston and New York City rates, but do not ship to either Boston itself or New York City, because they are not satisfied with the treatment their hay receives in those cities.

Defendants justify the change in classification of hay and straw from the sixth to the fifth class and the consequent increase in the rates on these commodities on the ground of the average car earnings received from the transportation of these articles. Hay is not only a light and bulky article, but the commercial conditions determining its distribution demand that it shall not be very greatly compressed when put up in bales. Whether the reason for this be merely the prejudice of the buyers or a real and substantial change wrought in hay by great compression is immaterial, so far as this case is concerned. The fact seems to be that hay is now baled in substantially the same way it was many years ago, and that the average loading in tons per car has not varied materially within the last ten years. The minimum carload weight on hay is 20,000 pounds to the 36-foot car, and some carriers, if not all, provide increased minima for cars of greater cubic capacity than the 36-foot car. Without stopping to consider these minima the evidence is conclusive that the average load for all cars is actually a little over 11 tons per car, and the representative of the National Hay Association at the

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argument in reply to an inquiry as to how much hay he could get into a 100,000-pound capacity car, stated "35,000 pounds easily." In other words, the representation made by the National Hay Association itself, after all this investigation, is to the effect that hay, owing to its bulkiness in comparison with its weight, can take up only about one-third of the weight-carrying capacity of the big cars, and would only load about one-half the weight that would be required if the car was loaded with grain. This difference between the loading of hay and grain was conceded in the first hay case. Volume 9, page 309. We there said: "Grain loads so much heavier per car than hay does that when transported between two given points at present rates" (the advanced rates now under consideration) "hay gives the carriers less revenue per car." In the same volume of our reports, on page 400, *In re Proposed Advance in Freight Rates*, we said:

Another commodity as to the movement of which the Commission is well informed is hay. This loads to a capacity of 22,000 pounds to a car, approximately. The sixth class rate from Chicago to New York is 25 cents per 100 pounds, and at this rate the revenue from a carload of hay would be \$55—only about one-half that of a carload of grain at 17½ cents; yet for thirteen years or more carriers transported hay throughout all Official Classification territory as sixth class, and often for less. January 1, 1900, this was raised to fifth class; the Commission has held improperly; but even so, as found in that case, grain is the better business.

The evidence and statistics produced in this case make it beyond question that, taking grain as loaded and transported and hay as loaded and transported, the earnings per car are greater for grain even at the present rates than they are for hay at much greater rates. It is undoubtedly true that hay is a very much cheaper commodity than grain and very much cheaper than many of the commodities which move at sixth class rates or lower, the value of a carload of hay being on the average not more than \$150 and ranging ordinarily between \$100 and \$200, according to grade and locality where raised. It is also true that the loss and damage claims arising from the transportation of hay are very small in comparison with those arising from the transportation of grains or for the transportation of many of the articles rated as fifth and sixth class or lower.

However, freight rates can not be made solely with reference to the value of the article transported or with reference alone to the loss and damage claims arising from transportation. The carrier is entitled to take into consideration the occupancy of its equipment and facilities, or, in other terms, to charge for the service rendered. This charge for the service rendered may be tested relatively by means of the rate per ton per mile, which is most helpful in connection with dense and heavy articles; or the value of the service and the reasonableness of the rates may be tested by means of the rate

per car per mile where articles of the same relative weight, density, direction, and volume of movement are in question; but generally the ultimate test with the carrier itself must be the return for the occupation and use of its equipment and facilities. Tested by this method, the fifth class rates on hay yield smaller returns to the carrier than the comparatively low commodity rates on grain and are therefore not unreasonable or unjust. It is to be borne in mind that the rates on grain from Chicago to New York are made in competition with the water rates or lake-and-rail rates between the same points and are the result of long and sharp competition not only between the carriers themselves but between local markets and ports of final transshipment. There is no such water competition in the transportation of hay.

A great deal of testimony was introduced with respect to the rates and conditions of transportation applying to cabbages, potatoes, apples, and other articles, which do not come into competition with hay for the simple reason that they are human food exclusively, whereas hay is consumed by animals alone, and grain is consumed by both men and animals. Neither do we think it necessary to go into the earnings, the dividends, or the general management of the defendants in view of our conclusion that the present rates on hay are neither unjust, excessive, nor discriminatory, as compared with the very low rates on grain. Complainant directed a part of its case to the theorem that because hay can move in lighter, older, and less perfect equipment than grain or cabbages, and because the carriers sometimes haul less dead weight in the transportation of hay than in the transportation of these other commodities that therefore it should be accorded very much lower rates.

In the view we take of this matter, after the complete testing of these rates for a period of ten years, hay does actually pay, under fifth class rates, lower charges for the services rendered by the carriers than grain, which moves at the cheapest rate established by the carriers, and we think it unnecessary to extend our examination any further. It results that the case must be dismissed and it will be so ordered.

CLEMENTS, *Commissioner*, dissenting:

I am unable to agree with the majority in the foregoing report and the disposition of this case. The former case, referred to in the report, involving the same questions as presented in this case, arose upon the concerted action of the carriers governed by the Official Classification whereby hay, which had been carried by them in class 6 during a period of thirteen years or more, in 1900 was raised to fifth class, resulting in a corresponding increase in the rates for the movement of hay throughout Official Classification territory as well as on

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shipments from points in that territory to many destinations in the south and elsewhere.

Upon full hearing and consideration of the former complaint the Commission concluded upon its findings in that case that this change in classification and the resulting increase of rates were unjust, unreasonable, and unlawful, for the reasons stated in *National Hay Assn. v. L. S. & M. S. Ry. Co.*, 9 I. C. C. Rep., 264.

Without reference in detail to the reasoning upon which this classification and its results are justified in the present case, it is sufficient to say that it wholly fails, in my judgment, to justify the retention of hay in fifth class with the resulting rates and discriminations found and condemned by the Commission in the former case.

Commissioners PROUTY and LANE join in this dissent.

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No. 2240.
INDUSTRIAL LUMBER COMPANY
v.
ST. LOUIS, WATKINS & GULF RAILWAY COMPANY ET AL.

Submitted April 6, 1910. Decided June 10, 1910.

Complaint alleges unjust discrimination in rates on lumber from Oakdale, La., to Port Arthur, Tex. Complaint dismissed without prejudice awaiting completion of plans now under way to carry into effect the views expressed in *Star Grain & Lumber case*, 17 I. C. C. Rep., 838.

William P. Molette for complainant.

James C. Jeffery and *Martin L. Clardy* for St. Louis, Watkins & Gulf Railway Company.

S. W. Moore, Britton & Gray, and *Fred H. Wood* for Kansas City Southern Railway Company and Texarkana & Fort Smith Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

The Industrial Lumber Company is engaged in the manufacture and sale of yellow-pine lumber at Oakdale, La. Its petition alleges that for many years the rate on export lumber from Oakdale to Port Arthur, Tex., was 7 cents per 100 pounds, but that effective August 18, 1908, that rate was advanced from 7 cents to 9 cents. Complainant alleges that the 9-cent rate is unreasonable and unjustly discriminatory, and prays that the Commission fix a reasonable rate, and that reparation be granted on all shipments on which the alleged unreasonable rate of 9 cents has been collected.

Complainant bases its allegation as to the discriminatory nature of the 9-cent rate upon the fact that its mills are in practically the same forest as other mills served by the Kansas City Southern and Texarkana & Fort Smith Railways, which lines reach into this forest from its western edge by means of various tap lines; that these mills are competitors of complainant; that their product is manufactured in the same territory and has practically the same point of origin as the lumber manufactured by complainants; that by means of lower rates

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over the Kansas City Southern and Texarkana & Fort Smith Railways its competitors reach Port Arthur, Tex., at from 2 to 3 cents per 100 pounds cheaper than complainant; that the 2-cent increase in rate amounts to from 80 cents to \$1 per 1,000 feet of lumber. It is stated that the export business of complainant has been greatly reduced as compared with the years 1906 and 1907, when the 7-cent rate was in effect, which decrease is attributed principally to the increase in the rate.

A further charge of discrimination is made against the St. Louis, Watkins & Gulf Railway in that it demands for its part of the haul on export lumber from Oakdale to Port Arthur 4 cents per 100 pounds on a minimum weight of 50,000 pounds, while it accepts 3 cents per 100 pounds for the same haul on lumber for domestic consumption on the basis of a minimum weight of 30,000 pounds.

The St. Louis, Watkins & Gulf Railway alleges that it can not be accused of discrimination by reason of the rates that other carriers may establish, and asserts that the rate from all mills on its line to Port Arthur is 9 cents. As the Kansas City Southern is party to both routes here in question the force of this argument is not conceded. This case does not, however, hinge upon that point.

In defense of the increase in the rate from 7 cents to 9 cents, witness for defendants, in addition to asserting the reasonableness of the 9-cent rate, stated the position of the carriers as follows:

Rates from Watkins & Gulf points, particularly Oakdale, as I understand it, to New Orleans, were higher than they were to Port Arthur and some one made a complaint of rates carried to Port Arthur before the commission (Louisiana commission) and it seems that they advised the Louisiana roads that unless the same advances were made in the Port Arthur rates, they would have to reduce the rates to New Orleans.

The rate attacked by complainant applies as a blanket from Alexandria, the northern terminus of the St. Louis, Watkins & Gulf Railway, clear down to Lake Charles. No lumber mills are actually shipping to Port Arthur via this line that are less than 25 miles north of Lake Charles. There are some 21 mills on the St. Louis, Watkins & Gulf all paying the 9-cent rate to Port Arthur and the mills of complainant at Oakdale are about in the lumber industrial center of the line of that defendant. The distance from Oakdale to Port Arthur is 155 miles; from Oakdale to Lake Charles is 60 miles; and from Lake Charles to Port Arthur via the Kansas City Southern is 95 miles. The 9-cent rate is divided 4 cents to the St. Louis, Watkins & Gulf, and 5 cents to the Kansas City Southern. None of the other mills paying this rate have complained against it. Complainant contends, however, that it is the chief shipper of export lumber and the principal one to feel the effect of the increase in the rate.

Two questions are presented for consideration in this case: (1) Is the rate of 9 cents an unreasonable charge for the service performed? (2) Does the adjustment place complainant at an undue disadvantage with its competitors from which relief can be given by the Commission?

We are not prepared to say that the 9-cent rate is unreasonable for the haul from Oakdale to Port Arthur, a two-line haul of 155 miles, yielding 0.0116 cent per ton per mile, and per car earnings of \$45. In fact, complainant's witness admitted that it was not the amount of the rate which was attacked in so much as it was the more favorable rate enjoyed by its competitors which placed it at a disadvantage.

Upon consideration of the record upon the point of reasonableness, and bearing in mind the fact that rates on lumber west of the river have been raised quite generally in recent years to the extent of 2 cents per 100 pounds, the Commission would not feel justified in reducing this rate as prayed.

With regard to the question of discrimination, complainant sets up the allegation that the raise of the rate from 7 cents to 9 cents has placed it at serious disadvantage and has practically wiped out a particular branch of its export business. The defendants' chief contention is that it was necessary to make the rate from Oakdale to Port Arthur 9 cents in order to avoid the necessity of reducing the rate from Oakdale to New Orleans to meet the 7-cent rate then in effect from Oakdale to Port Arthur, the distance from Oakdale to New Orleans being 231 miles, as against 155 miles Oakdale to Port Arthur. It is a matter of common knowledge that the competition between the several Gulf ports is keen and that export rates to those ports are frequently, if not generally, made the same.

The question of tap-line allowances is also involved in this case, and the records in the *Star Grain & Lumber case*, 17 I. C. C. Rep., 338, and the *Chicago Lumber & Coal case*, 16 I. C. C. Rep., 323, have been stipulated into the record in this case. In his brief counsel for the St. Louis, Watkins & Gulf Railway Company states:

Another feature that was brought out in the evidence was that, if the so-called tap-line divisions were eliminated, the complainant in this case would be benefited to such an extent that it would be willing to withdraw its objection to the 9-cent rate. With the decision of this honorable Commission in the *Star Grain and Lumber case* before us, we feel positive in asserting that this complaint will be satisfied shortly.

In the *Star Grain & Lumber case, supra*, we said:

We shall not prejudice any controversy over rates that may follow upon the withdrawal of these allowances by assuming that the present rates with the allowances discontinued will be unreasonable. But it seems well to suggest that the carriers and shippers ought promptly to confer, so that the entire

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situation may be readjusted on a basis that will eliminate the unlawful practices here referred to and will give the shippers transportation on a reasonable basis.

We have evidence of the acceptance of those views by some of the most important of the carriers operating in the southern lumber-producing territory west of the Mississippi River and of plans now on foot to carry them into effect. We shall not here attempt to equalize discriminatory conditions created by tap-line allowances by reducing the rate complained of.

The complaint will be dismissed without prejudice, and if the tap-line situation is not cleared up within a reasonable time and discrimination against complainant exists because thereof, the matter may be brought to our attention for the purpose of determining whether or not such discrimination is undue.

Such an order may be entered.

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No. 2919.
NORTHERN LUMBER MANUFACTURING COMPANY
v.
TEXAS & PACIFIC RAILWAY COMPANY ET AL

Submitted April 30, 1910. Decided June 10, 1910.

1. Demurrage and storage charges collected as result of carriers demanding rates in excess of those in their legally filed tariffs should be refunded, and this principle applies to cases in which such charges are collected on shipments as to which no rates are published.
2. Reparation awarded on shipments of steel rails, logging cars, and other equipment from Onalaska, Ark., to Batchelor, La.

Thomas J. Kernan and Lawson B. Aldrich for complainant.
S. H. West, Roy F. Britton, and W. S. Braggins for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This is a claim for reparation in the total sum of \$2,749.96, arising from the shipment from Onalaska, Ark., to Batchelor, La., of four carloads of second-hand steel rails and seven carloads of old logging cars, steam skidders, and other equipment, in July, 1908. With the exception of \$130 car service accruing at Batchelor during pendency of a dispute as to the proper rate the claim is based on alleged unreasonable rates of transportation. The shipments moved via Texarkana at the combination rate of 86 cents, but it appears that charges were collected at different rates from 86 to 94 cents. Prior to the time these shipments moved the St. Louis rate applied from Onalaska, but on account of certain conflicts in the tariffs of the carriers the through rate from Onalaska was canceled. The complainant claims that the rate on these shipments should not have exceeded the St. Louis rate of \$3.77 per ton on new rails and 35 cents per 100 pounds on the other equipment. The distance from St. Louis to Batchelor over the lines of defendants is 926.5 miles and from Onalaska to Batchelor via route of movement about 454 miles. Shipments from St. Louis pass through Onalaska. Defendants admit

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that the rate charged was unreasonable and should not have exceeded the St. Louis rate, subject, however, to the increased minimum of 44,800 pounds on steel rails. They also asserted that the St. Louis basis would shortly be restored to Onalaska.

Upon examination of our tariffs we find that the only rate applicable to steel rails from Onalaska to Batchelor on the dates of movement was the Alexandria combination of 55 cents per 100 pounds, the Texarkana combination of 86 cents, owing to certain published exceptions, not being available. There is no present rate, so far as our investigation shows, from Onalaska to Batchelor. At the time of these shipments the rate from St. Louis to Batchellor was \$3.77 per ton, minimum weight 20 gross tons. At present there appears to be no rate published from St. Louis to Batchelor, although as to various other commodities New Orleans rates apply. The present rate St. Louis to New Orleans is \$2.65 per ton.

As to the logging cars, narrow-gauge box cars, and steam skidders, no rates appear to have been applicable on the dates of shipment except the Alexandria combination of 91 cents on the steam skidders, and this rate apparently is inapplicable if steam skidders are included under the head of narrow gauge railway equipment. The present rate on narrow-gauge cars and skidders appears to be the Texarkana combination of 87 cents and on logging cars, loaded on flat cars, the Texarkana combination of 73 cents. The St. Louis to Batchelor rate on dates of shipment was 35 cents and the present rate is the same.

We find that complainants are entitled to reparation on the shipments of steel rails on the basis of \$3.77 per ton, minimum weight 20 gross tons, and on the other equipment on the basis of 35 cents per 100 pounds, these being the St. Louis to Batchelor rates in effect on the dates the shipments moved, and which defendants recognize as a basis of reparation. An order will be entered for reparation in the total sum of \$2,698.06, with interest from July 24, 1908, this being based on the increased minimum of 20 gross tons on steel rails, as suggested above, and including the \$130 car service alleged to have been wrongfully exacted. We have heretofore held that demurrage and storage collected as a result of carriers demanding rates in excess of those in their legally filed tariffs must be refunded, and this principle applies to cases in which charges are demanded on shipments as to which no rates are published.

In the absence of further evidence as to the reasonableness of the present Onalaska to Batchelor rates either *per se* or as compared with those from St. Louis to New Orleans, no order will be made for the future.

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No. 2548.

PAT. CHAPPELLE

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

No. 2636.

SAME

v.

CENTRAL OF GEORGIA RAILWAY COMPANY.

No. 2635.

SAME

v.

ILLINOIS CENTRAL RAILROAD COMPANY.

No. 2858.

SAME

v.

ATLANTIC COAST LINE RAILROAD COMPANY.

Submitted February 25, 1910. Decided June 2, 1910.

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1. Minimum rates exacted for the movement of private passenger and baggage cars not found unreasonable.
 2. The tents, poles, seats, and other equipment of a theatrical and minstrel troupe, provided the same can be loaded into an ordinary baggage car, are held to be baggage under the rules governing the movement of private baggage and passenger cars.
 3. In the absence of specific limitation, a private baggage car which contains a stove must be transported at the rate properly applicable to private baggage cars; the rate on combination cars is inapplicable.

E. C. Brandenburg for complainant.

R. Walton Moore for Atlantic Coast Line Railroad Company, Central of Georgia Railway Company, and Illinois Central Railroad Company.

W. A. Northcott for Louisville & Nashville Railroad Company.

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REPORT OF THE COMMISSION.

LANE, Commissioner:

Pat. Chappelle is the owner and manager of a theatrical and minstrel troupe operated under the name of "A Rabbit's Foot Company." This troupe consists of 25 to 40 members, all of whom are negroes. Owing to the fact that theaters and public halls are not generally available to theatrical organizations of this character the complainant gives many of his performances under a tent which, with the necessary poles and seats, constitutes part of the equipment necessary for a performance. To accommodate the movement of the members of the troupe with their paraphernalia the complainant provides two cars, one a Pullman sleeper, the other a baggage car. These cars have moved on passenger trains over substantially every railroad in the south, but complainant now brings these proceedings to have his rights determined as the owner of these private cars moving over the defendant lines.

1. In the case against the Central of Georgia complaint is made that the carrier refuses to move these coaches upon passenger trains, but ignominiously attaches them to freight trains. The carrier's defense to this charge is that the physical condition of the baggage car did not permit it safely to be transported as a part of a passenger train, and although the sleeping car was in excellent condition it was not desirable to separate these two coaches. After an extensive hearing upon this question the Commission directed that an examination should be made of the condition of the baggage car to test the soundness of the carrier's defense. It was agreed by the complainant that he would make such repairs as were necessary to make the car entirely acceptable to the carrier, and on the latter's behalf it was stipulated that such repairs being made both the passenger and the baggage car would be moved on regular passenger trains. Examination of the car was made, and we are informed that the car has been so repaired that there is no longer objection on the part of the carrier to moving it as desired by the complainant. This cause of complaint being eliminated, no order is required from the Commission.

2. The case against the Atlantic Coast Line involves the imposition of the rate applicable to "combination cars" of \$25 as a minimum charge upon the baggage car of complainant, because the car contains a stove upon which cooking for the troupe is sometimes done. The tariffs of the carriers do not in terms define a baggage car as distinguished from a combination car, and it appears that this car is generally treated by the railroads of the south as a baggage car, subject to the \$10 minimum, although the Atlantic Coast Line has not so regarded it. The prime purpose of this car unquestionably is to

carry the baggage of the troupe, and in the absence of a specific limitation as to its use for refreshment purposes we think complainant is entitled to have this baggage car transported at the \$10 minimum.

3. The cases against the Louisville & Nashville and against the Illinois Central attack the right of these carriers to make an extra charge for the carrying of tents, poles, and seats when transported in the baggage car. The tariffs of defendants provide that tents, poles, etc., used by circuses and performances out of doors shall be treated as freight, and although these articles of complainant's are loaded into and transported in the baggage car they are charged for as freight. In these complaints, too, it is said that complainant is unjustly discriminated against in that his paraphernalia is charged for as freight while similar baggage of other theatrical troupes is not subjected to such charge. Such paraphernalia, we find, does not differ from much of the baggage that is transported in the baggage cars of other theatrical companies. There appears to be no difficulty whatever in loading these articles into an ordinary baggage car, and there is no transportation reason for a classification of theatrical equipment which is so intense that it turns upon the question whether it is to be used in an out-of-door performance or an indoor performance. And in fact the tariffs of some of the carriers provide that the rule as to passenger and baggage cars applicable to ordinary theatrical troupes shall apply "for the movement of carnival companies, street fair aggregations, and similar amusement companies giving performances under tents or in buildings, whose freight can be handled as baggage in standard baggage cars under regular baggage rules and regulations." We are of the opinion that the rule of the defendants requiring this paraphernalia to be charged for at freight rates is unreasonable, and that such rule should be amended substantially to provide that if the paraphernalia can be loaded into an ordinary baggage car it shall be moved as part of the baggage under the rules governing the movement of private baggage and passenger cars.

4. We come now to the question of the minimum rates fixed by the four defendants for the movement of passenger and baggage cars. The rates complained of are; \$25 for each passenger or combination car and \$10 for a baggage car accompanying a passenger car. These are said to be unreasonably high. The Pennsylvania and the Baltimore & Ohio roads and other lines operating in Trunk Line territory provide a minimum charge of \$25 for each passenger, and accompanying baggage car. They do not provide, as alleged in the complaints, a \$15 minimum for a passenger car. The minimum is \$25 for the passenger car with the privilege of moving a baggage car at the same time without additional charge.

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The Commission hesitates to reduce a rate unless clearly excessive. The present is the first complaint made against this minimum charge, although extensive use is made by theatrical companies of these private car rates. Although in some other parts of the country a lower minimum is charged, the rates in the south appear to be generally on a higher basis than in other sections of the country. Upon the record we see no reason to reduce the rates at present in effect.

The carriers have raised the question in these cases as to whether they are common carriers or private carriers as to the movement of private cars. They claim that they are private carriers and may haul a private car as they may see proper under such rules and regulations as they may make; that the Commission has no authority to either order a private car to be moved or to pass upon the question as to the reasonableness of the charges and regulations. The Commission has held in the case of *Carr v. N. P. Ry. Co.*, 9 I. C. C. Rep., 1, that if a carrier transports "private cars of any class, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes." We do not doubt the power of the Commission to regulate the rates imposed by carriers upon the movement of private equipment. It is hardly necessary, however, in this case to enter into a full consideration of this broad question. The representatives of all the carriers repeatedly stated during the hearings in these cases that there was no intention on the part of the companies they represented to unjustly discriminate against complainant; that if his cars were in good physical condition they would be moved on equal terms with the private cars of other parties. The defendant carriers will be held to a strict compliance with these representations made on their behalf. The fact that these cars are owned by a negro and are occupied by negroes does not justify the slightest discrimination against them.

Orders will be entered—

(a) Dismissing the complaint as to the Central of Georgia so far as the latter is charged with unjust discrimination by reason of its refusal to transport complainant's cars in its passenger trains.

(b) Directing the Atlantic Coast Line to charge a minimum of \$10 on the baggage car of complainant accompanying his passenger car, under the tariff definition of a baggage car here concerned.

(c) Ordering the Illinois Central and Louisville & Nashville Railroad companies to transport the tents, poles, and seats and other paraphernalia of complainant as ordinary baggage under rules governing private baggage and passenger cars when such paraphernalia is of a character that may be loaded in an ordinary baggage car; and—

(d) Dismissing as to all carriers upon the question of the reasonableness of the minimum rates charged.

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No. 2601.

PENNSYLVANIA SMELTING COMPANY

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted November 3, 1909. Decided June 10, 1910.

A rate of \$12 per net ton on lead ore and concentrates from the Coeur d'Alene district in the state of Idaho to Carnegie, Pa., found unreasonable and reduced to \$11.40 per net ton. Reparation awarded.

J. M. Wright for complainant.

Emerson Hadley for Northern Pacific Railway Company and Chicago, Burlington & Quincy Railroad Company.

Edson Rick for Oregon Railroad & Navigation Company.

Charles B. Fernald for Pittsburg, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

The rate charged for the transportation of ore and concentrates of lead, copper, silver, and zinc from the Coeur d'Alene district in the state of Idaho (Wardner, Wallace, Mullan, Burke, Sunset, and Larson) to both Carnegie, Pa., and Atlantic coast points (Chrome, Perth Amboy, Carteret, and Jersey City, N. J.) is \$12 per net ton, though the haul to Carnegie is about 440 miles less than the haul to the Atlantic coast points, Carnegie being intermediate thereto when the haul is over the lines of the defendants. But from all other points in the United States where such metalliferous properties originate, whether ore from the mine or bullion (the product) from the smelter, the rates are, as a general rule, 60 cents per ton less to Carnegie than to New York.

The complainant corporation, which is engaged in the smelting of lead, gold, and silver from ore at Carnegie, alleges that the rate of \$12 per net ton applied on lead ore and concentrates, to which commodities this complaint exclusively pertains, is in violation of sections

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1, 2, 3, and 4 of the act to regulate commerce, and prays that a differential of 60 cents per ton be allowed Carnegie so that the rate will be \$11.40 per ton. The complainant presented testimony in support of the allegation that this rate violates the first four sections of the act to regulate commerce, but the defendants relied only on one defense, namely, that the \$12 rate to the Atlantic coast points was made necessary through water competition, and was extended westward as a blanket rate as far as Chicago, Ill., including Carnegie, and that under the circumstances a higher rate to Carnegie might with perfect propriety be established. And in support of the contention that the \$12 rate to the Atlantic coast points was compelled by water competition, evidence in the form of two shipments of pig lead (product of lead ore) from San Francisco to New York via water was presented, which shows that there was charged, respectively, \$4 and \$5 per ton. The rate from the Cœur d'Alene district to San Francisco via rail and water is \$5.50 per ton, which would make the entire rate upon these shipments from the Cœur d'Alene district to New York via water and rail \$9.50 and \$10.50 per ton, respectively. But this defense is destroyed, as the defendants in Great Northern tariff, I. C. C. No. A-3002, published a rate on pig lead from Seattle, Everett, and Tacoma, Wash.—smelting points on the Pacific coast—to Carnegie of \$12.10 per ton, and to New York of \$12.70 per ton, there being a differential of 60 cents in favor of Carnegie.

Moreover, from the testimony it appears that the complainant is the only smelter and refiner of lead ore and concentrates between Chicago and the Atlantic coast, and therefore the only one affected by the rate in question. One of its competitors has a smelter at Perth Amboy, N. J., and obtains the same rate upon the ore as complainant. It is asserted that the Perth Amboy smelter is owned by the same corporation which owns smelters at East Helena, Mont., and various other places. It further appears that these smelters located at Perth Amboy and East Helena can lay down pig lead at any point in the United States at a much less freight rate than complainant. For instance, the smelter at East Helena can haul 55 per cent lead ore from the Cœur d'Alene district to East Helena, there smelt it, and deliver the bullion in Pittsburg at a freight rate amounting to \$9.40 per ton less than the complainant can haul the same ore from the same originating territory and deliver it in Pittsburg, which is eight miles from Carnegie and practically the home city of complainant. When 75 per cent ore is hauled the East Helena smelter can lay down the product in Pittsburg at a rate amounting to \$4.65 per ton less than the complainant. Apparently the complainant can compete more favorably when it buys high-grade ore rather than low-grade ore, this being due to the fact that, while the rate on the ore is a little lower than that

applied on the product, the greater tonnage of the ore makes the rate applied thereon commensurately higher. The state of Idaho produces more lead ore than any other district in the United States, and the Cœur d'Alene district produces large quantities of high-grade lead ore containing silver (the specific ore the complainant desires to obtain), and why it should be handicapped in drawing its supply of ore from the Cœur d'Alene district is not of record. Complainant made 40 shipments the aggregate weight of which was 2,879,297 pounds. The charges paid, \$12 per ton, amounted to \$17,275.78.

We are of the opinion that the complainant should obtain the same differential on lead ore and concentrates that is applied on other metal-liferous properties from the various points of origin in the United States, and therefore that a just and reasonable charge on shipments moving within the period of limitation should not have exceeded \$11.40 per ton. Reparation will be awarded to the complainant in the amount of \$863.79, with interest thereon from January 18, 1909. Defendants will be required to maintain for the future a rate from the points in the Cœur d'Alene district, in the state of Idaho, covered by the complaint, to Carnegie, Pa., not in excess of \$11.40 per ton, or of 95 per cent of the rate contemporaneously charged to Perth Amboy, N. J., and other eastern points now taking the \$12 rate. An order will be entered accordingly.

19 I. C. C. Rep.

No. 2654.

FELTON GRAIN COMPANY

v.

UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted March 31, 1910. Decided June 10, 1910.

Rate charged on a shipment of hay from Henderson, Colo., to Breaux Bridge, La., found to be unreasonable. Rate prescribed for the future and reparation awarded.

Alice White for complainant.

J. R. Christian for Houston & Texas Central Railroad Company; Texas & New Orleans Railroad Company; and Morgan's Louisiana & Texas Railroad & Steamship Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint attacks a class rate of 67 cents per 100 pounds charged for a movement of a carload of hay January 18, 1908, from Henderson, Colo., to Breaux Bridge, La., over the lines of defendants. The shipment weighed 28,400 pounds and the total freight charge collected was \$190.28. Reparation is asked on the basis of a 40-cent rate in the sum of \$76.68.

Previous to the time the shipment moved, from 1902 to 1907, there was in effect a commodity rate of 40 cents from Denver and other Colorado common points, including Henderson, to New Orleans and intermediate main-line points, and to this rate was added 5 cents, Breaux Bridge being located on the Arnaudville branch. This made a combination rate of 45 cents. At the time the shipment moved the 40-cent rate had been omitted from the tariff and the rate applicable was the class rate of 67 cents, which was collected on this shipment. Some sixty days after this movement a commodity rate of 40 cents, Henderson to Breaux Bridge, was established, and later the present combination rate of 54½ cents was made effective.

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In their answers, some of the defendants agreed to reparation on the basis of a rate of 40 cents and others on a higher basis. At the hearing no defense was offered of the class rate charged.

Complainant's brief states that there was published a supplement which made the Arnaudville branch and the Port Barre branch one and the same, therefore making New Orleans rate of 40 cents apply to Arnaudville branch prior to movement of shipment, but the tariffs on file do not support this.

Upon the record we find that the rate charged was unjust and unreasonable in so far as it exceeded 45 cents, and reparation will be awarded in the sum of \$62.48, with interest from February 15, 1908.

Effective February 9, 1910, the rate from Denver to Breaux Bridge was made 49½ cents, which with the local from Henderson to Denver of 5 cents makes the through rate, Henderson to Breaux Bridge, 54½ cents. There is, however, a rate of 49½ cents, Henderson to Port Barre, which is beyond Breaux Bridge. Upon the record we find that the rate for the future upon hay, in carloads, from Henderson, Colo., to Breaux Bridge, La., should not exceed 49½ cents per 100 pounds.

An order will be issued in accordance with the findings herein expressed.

19 I. C. C. Rep.

No. 2676.

OHIO FOUNDRY COMPANY

v.

PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAIL-
WAY COMPANY ET AL.

Submitted June 3, 1910. Decided June 11, 1910.

1. Tariff in force prior to January 1, 1909, provided rates of \$1.35 and \$1.45 per 100 pounds on "iron fireplaces and grates for same" between the same points and over the same lines; effective January 1, 1909, rates increased to \$1.40 and \$1.50; Held, That the lower rates should apply on complainant's shipments.
2. Rate of \$1.40 not found to be unreasonable.

J. O. Bracken for complainant.*Edgar W. Camp, T. J. Norton, Robert Dunlap, and U. T. Clotfelter* for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

This complaint involves the carload rates on fireplaces and grates, gas and coal, assessed on 11 shipments by complainant from Steubenville, Ohio, to San Francisco, Cal. On 7 shipments which moved prior to January 1, 1909, charges were collected on rate of \$1.45 per 100 pounds, while a rate of \$1.50 per 100 pounds was exacted on the remaining 4 shipments, which moved subsequent to that date.

Complainant alleges that rate of \$1.35 per 100 pounds should have been applied on the shipments moving prior to January 1, 1909, because any higher charge was contrary to the provisions of defendants' tariffs and that any higher charge after that date is unreasonable. Reparation is asked.

It is stipulated by the parties to this case that the shipments consisted of mixed carloads of articles which defendants claim are gas grates but which complainant claims are gas fireplaces and grates and iron fireplaces and grates designed for burning coal; also that the shipper's invoices describe the shipments as gas grates and not otherwise.

Transcontinental westbound tariff in effect prior to January 1, 1909, contained the following provisions:

Iron fireplaces and grates for same, n. o. s., made of wrought or cast iron; also furnace grates, gas grates (boxed or crated); portable fireplaces and portable steam radiating mantels; iron linings; grate dampers, andirons (iron), o. r. b., and chafing, \$1.45 per 100 pounds in carloads from eastern defined territories to Pacific coast terminals.

Iron fireplaces and grates for same n. o. s., made of wrought or cast iron; also furnace grates, \$1.35 per 100 pounds, carloads, from eastern defined territories to Pacific coast terminals.

Portable fireplaces and portable steam radiating mantels, o. r. b., \$1.35 per 100 pounds in carloads from eastern defined territories to Pacific coast terminals.

Minimum weight applicable to the shipments above described, 30,000 pounds. Effective January 1, 1909, the rates shown above were increased 5 cents per 100 pounds and the minimum reduced to 24,000 pounds. Another provision in the tariff reads:

Stoves or grates, gas, oil, and gasoline and ovens for same, boxed or crated, o. r. b., min. c. l., wt., 20,000 pounds, \$1.45.

Complainant contends that iron fireplaces and grates for the use of coal or wood are of the same style and make as the articles comprising these shipments, which defendants allege were gas grates.

The testimony shows that fireplaces and grates for the use of gas are made in the same factories that make fireplaces and grates for the use of coal and wood; that they are of the same make and style; that they are shipped in crates of about the same dimensions; and that they are shipped in the same cars from and to the same points.

Defendants contend that the shipments do not come under the description contained in the tariff "iron fireplaces and grates for same, n. o. s." taking the rate of \$1.35 before and \$1.40 after January 1, 1909, because they are not fireplaces, "n. o. s.," being specifically provided for in item "stoves or grates, gas, oil, and gasoline." It is to be observed, however, that this provision carries a minimum of 20,000 pounds. On the shipments involved 24,000 pounds minimum was applied. It is further contended that the item first hereinbefore quoted, providing for mixed carloads, mentions first "iron fireplaces and grates for same, n. o. s., made of wrought or cast iron, also furnace grates, gas grates, boxed or crated, etc.," and if "a gas grate" is an "iron fireplace and grate for same, n. o. s.," there was no occasion to specify gas grates in the item. It is insisted that the conclusion must be that if the gas grate is an iron fireplace it is not an iron fireplace "n. o. s.," but is otherwise specified somewhere in the tariff.

The evidence shows that "gas grates" is a trade name which has reference to and includes fireplaces made of iron for the burning of

gas. We do not think that the declaration by the shipper in the invoices that the shipments were "gas grates" is conclusive of the question of what the shipments actually were. The tariff application is to be construed with reference to what articles actually comprised the shipments. There is no question that the shipments were mixed carloads of gas fireplaces and grates and coal fireplaces and grates. It is admitted by defendants that, if the shipments were fireplaces and grates for the use of coal or wood, the \$1.35 rate should be applied, but, it is asserted, that the fact that they contained gas grates removes them from the class taking the lower rate.

At the hearing a traffic official of the Southern Pacific Company testified that, in his opinion, the \$1.35 rate was properly applicable to fireplaces and gas grates, and that it was so assessed by his company. It is noted that the provision which specifically includes "gas grates" (rate \$1.45), names a number of articles in addition to those enumerated in the provision naming the \$1.35 rate, and this unusually large mixture doubtless accounts for the higher rate.

The tariff provisions in question clearly show two rates, \$1.35 and \$1.45, on "iron fireplaces and grates for same, n. o. s., made of wrought or cast iron." In such a case the shipper should not be charged the higher rate. Under the circumstances our conclusions are, and we so find, that the tariff provision reading "iron fireplaces and grates for same, n. o. s., made of wrought or cast iron; also furnace grates * * *" fairly covers the shipments in question, and that any charges in excess of \$1.35 per 100 pounds, minimum weight 30,000 pounds on the shipments moving prior to January 1, 1909, and in excess of \$1.40 per 100 pounds, minimum weight 24,000 pounds on the shipments moving subsequent to said date constitute overcharges which the defendant should refund without an order of the Commission.

Turning to the question of the reasonableness of the advance of 5 cents per 100 pounds on shipments made after January 1, 1909, we are unable to find from this record that the advanced rate is unreasonable. It is a blanket rate from the Mississippi River to the Atlantic seaboard to all Pacific terminals and we have heretofore found in numerous cases that terminal rates of this character are low and not a fair measure of rates generally.

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No. 3025.

J. I. PRENTISS & COMPANY

v.

PENNSYLVANIA RAILROAD COMPANY.

Submitted May 11, 1910. Decided June 3, 1910.

The notation by the consignor on a bill of lading of the letters "D. L. & W. R.R." in the blank intended for the naming of the route interpreted, on a shipment from Philadelphia to Buffalo, to require the defendant to deliver the car to the Lackawanna at Manunka Chunk, and the instructions thus given are not satisfied by a mere delivery at Buffalo on the terminals of the latter line. Therefore *Held*, That the complainant is entitled to be reimbursed for unloading charges it was compelled to pay but which would have been absorbed by the Lackawanna under tariff authority had it participated in the line haul.

Benjamin F. Marshlow for complainant.

Edward T. Johnson and *George Stuart Patterson* for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On November 15, 1908, a carload of molasses, weighing 37,125 pounds, was shipped by Heyl Brothers from Philadelphia, in the state of Pennsylvania, to Buffalo, in the state of New York, consigned to the complainant in care of the Knowlton Warehouse Company. The freight charges amounted to \$59.40 and were based upon a carload rate of 16 cents per 100 pounds. This rate was applicable locally from Philadelphia to Buffalo over the lines of the defendant and had also been published as the joint through rate of the defendant and the Delaware, Lackawanna & Western through their junction at Manunka Chunk. In the blank on the bill of lading intended, as its printed wording shows, for the naming of the route, the consignor had noted the letters "D. L. & W. R. R." after the printed word "Route" at the head of that blank space. Instead of delivering the car to the Lackawanna at Manunka Chunk the defendant carried it over its own lines to Buffalo and there delivered it to the Lackawanna, by which line the car was switched to the Knowlton warehouse. The tariffs of

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the defendant provide for the absorption of switching charges at Buffalo, and the switching charges of the Lackawanna were therefore paid by it.

Under tariff authority the Lackawanna unloads carload freight at Buffalo free of charge when it has a line haul. It does this at its own freight station and also at the Knowlton warehouse, which has, in effect, been made one of its freight stations at Buffalo. Shippers over its line have the right to demand delivery of carload freight over the platform of that warehouse, and much traffic is thus delivered free of charge to consignees at Buffalo. Having received this car from the Lackawanna, consigned to the complainant in its care, the Knowlton Warehouse Company in due course unloaded and subsequently delivered the shipment to complainant over its platform. But as the Lackawanna had not had a line haul the warehouse company collected \$6.50 for its services.

The complaint is brought against the defendant in order to obtain a refund of this charge on the ground of misrouting. If the car had moved through Manunka Chunk, giving the Lackawanna a line haul from that point to Buffalo, it would have absorbed the unloading charges under what we understand from the record was tariff authority for a free unloading and handling service over the warehouse platform. It may be added that the defendant itself gives a free unloading service at Buffalo, over the platform of the Keystone warehouse, and as it competes with the Lackawanna for Buffalo traffic we think it is fairly chargeable with notice of the free unloading and handling service at that point of its competitor. Both carriers, in fact, load and unload carload traffic at their freight stations and at the warehouses named in their respective tariffs, and on request even assist in loading and unloading carload freight on their team tracks.

Upon these facts we find that the shipment was misrouted by the defendant. The notation by the consignor in the blank on the bill of lading intended for the naming of the route must be regarded as an expression of the consignor's intention that the Lackawanna was to participate in the line haul. It has been our observation that when a line haul by one company is intended and a terminal delivery is desired on the tracks of another company the ordinary and usual practice is to indicate in some form on the bill of lading that the reference there made to the other line is for delivery purposes only. The notation by the shipper of the letters "D., L. & W. R. R." on the particular part of the bill of lading heretofore referred to seems to us to have put the defendant under the obligation of utilizing the facilities of the Lackawanna to the best advantage in the interest of the shipper; and this could be done only under the joint rate from Philadelphia to Buffalo to which the defendant was a party with the Lackawanna

and under which the shipment ought to have been delivered to the latter line at Manunka Chunk. Had this course been pursued the Knowlton Warehouse Company would have unloaded the car, but it would have done so for the Delaware, Lackawanna & Western as a free terminal transportation service offered by that line to its car-load shippers. We therefore find that the defendant is liable to the complainant in the sum of \$6.50, with interest from December 1, 1908, being the amount of the unloading charges of the warehouse company that the complainant was required to pay at Buffalo as the result of the misrouting of the shipment by the defendant.

An order will be entered in accordance with these findings.

19 I. C. C. Rep.

No. 2788.

BILLINGS CHAMBER OF COMMERCE

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.

Submitted May 13, 1910. Decided June 10, 1910.

Less-than-carload class rates from Billings, Mont., and Sheridan, Wyo., to points in Wyoming on lines of defendant found to be unreasonable. Reparation denied.

Charles D. Drayton and F. B. Reynolds for complainant.

James E. Kelly, C. E. Spens, C. G. Burnham, and George H. Crosby for defendant.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This complaint alleges that carload and less-than-carload class rates charged for the transportation of freight from Billings, Mont., to points in Wyoming on defendant's main line as far as and including Newcastle, Wyo., and to all points on defendant's branch lines extending from Toluca, Mont., to Cody, Wyo., and from Frannie, Wyo., to Kirby, Wyo., are unreasonable. Reparation is asked. The Sheridan Chamber of Commerce has intervened substantially in behalf of the defendant, but praying that if any change is made its interests be protected.

The rates with respect to which complainant is primarily and chiefly interested are those on merchandise or less-than-carload shipments which move under class rates as per Western Classification. In other words, the question presented has relation principally to distributive rates from Billings to the Wyoming points.

Billings is a city of about 16,000 population, situated in the southeastern part of Montana on the main lines of the Northern Pacific and the Chicago, Burlington & Quincy railroads. It is also reached by the Billings & Northern Railroad, a subsidiary line of the Great Northern extending from Billings in a northerly direction to Great Falls, Mont. The main line of the Chicago, Burlington & Quincy extends northwesterly from Lincoln, Nebr., through Newcastle and Sheridan, Wyo., to Billings. Branch lines extend from the main line at Toluca to Cody and from this branch at Frannie to Kirby.

Distances, and present less-than-carload rates from Billings to some of the principal Wyoming points in question, and comparison of same with rates in similar territory on neighboring lines are indicated by the following table:

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Defendant's less-than-carload first class rate from Billings to Newcastle, the most distant main line point included in the complaint, is \$1.55 per 100 pounds. To Dakoming, 20 miles more distant on the same line, the rate is \$1.61; to Edgemont, 24 miles still farther distant, it is \$1.38. It is thus seen that these rates increase from Billings to Dakoming and then drop off suddenly, the first class rate to Edgemont, 24 miles more distant from Billings and on the same direct line, being 23 cents per 100 pounds less than to Dakoming.

The Oregon Short Line rates shown in above table are relatively high to the last five named points. That this is an unusual or forced adjustment is suggested by the fact that the next highest rate shown from Boise is \$1.01 for 239 miles.

By way of comparison it is noted that defendant's first class less-than-carload rates per 100 pounds from Omaha to some of the representative points here involved or referred to are as follows: To Edgemont, 527 miles, \$1.20; to Dakoming, 551 miles, \$1.35; to Newcastle, 571 miles, \$1.42; to Gillette, 648 miles, and blanketed to Parkman, 775 miles, \$1.84; to Billings, 892 miles, \$1.95.

As indicating the absence of consistency in this Billings adjustment, it is noted that the defendant's rates from Billings to Sheridan and from Sheridan to Billings, in opposite directions over the same track, and not on long and heavy mountain grades, differ as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Billings to Sheridan...	91	80	65	55	46	41	36	28	20	16
Sheridan to Billings...	66	63	57	51	46	41	36	28	20	16

Defendant alleges that these comparisons are without value or force and cites the following expressions by the Commission:

In judging the reasonableness of a rate very little importance can be attached to comparisons made with rates in other sections of the country. The rates of this country are so far dependent upon various and varying conditions that it is possible, by selecting the proper commodity of the particular locality, to show almost anything in the way of comparison. *Cattle Raisers' Assn. v. M., K. & T. Ry. Co.*, 11 I. C. C., Rep., 296.

Where particular rates are complained of as being unreasonable, rates of carriers in other sections of the country are not proper standards of comparison for showing substantial similarity in transportation conditions. *Evans v. U. P. R. R. Co.*, 6 I. C. C., Rep., 543.

Evidently the full force and meaning of the words "In other sections of the country" has been overlooked or misapprehended. The comparisons above made are not "in other sections of the country" but are, in the main, in the immediate section or locality where the rates complained of apply, and are on the same kinds and classes of traffic.

Complainant alleges, and comparisons seem to amply sustain the contention, that defendant's rates from Billings to the Wyoming points in question are higher than rates from and to any other points for similar distances on defendant's system, and that they are much

higher than are applied generally from and to points on lines of other carriers in the same general territory.

Complainant points out that rates on the Billings & Northern, a recently constructed line in the immediate neighborhood, are lower than rates to points on the line of the defendant for similar distances. For example: Defendant's first class less-than-carload rates from Billings to Frannie, 131 miles, Basin, 194 miles, and Kirby, 242 miles, are, respectively, 70, 98, and 128 cents. The Billings & Northern rates for corresponding distances are 62, 74, and 84 cents. Defendant's rates from Billings to its main-line points here complained of are higher for corresponding distances than to points on its branches, and therefore more strikingly in contrast with the Billings & Northern rates.

The Toluca-Cody branch line was built late in 1901. It connects with the main line at Toluca, 44 miles east of Billings, and extends in a southwesterly direction to Cody, a distance of 130 miles. A branch line from Frannie, a station on the last-named line, extending in a southerly direction to Worland, Wyo., was built in July, 1906, and was extended and completed to Kirby, about 111 miles from Frannie, in 1907. Cody, Basin, and Kirby are the most important points on these branches, the other towns containing at present but few inhabitants.

Defendant contends that the territory reached by these branch lines, known as the Big Horn Basin of Wyoming, is new, in a sparsely settled mountainous country, where transportation difficulties are great and construction cost heavy, and that earnings on these lines on all business from and to all points is far below a fair return on the investment. It admits that its rates from Billings are higher than from and to many other points on its system for similar distances, but insists that the volume of traffic and other conditions warrant the rates charged. It denies that the rates are unreasonable relatively or in and of themselves.

Defendant urges that the rates complained of should be considered in connection with the rates to Billings. That is, the in-and-out rates should be considered together in comparing the Billings adjustment with that at other points. The main insistence of complainant is that the rates from Billings are unreasonable *per se*. But, applying the test suggested by defendant, it appears that in the commodities that form the great bulk of the traffic, and at the points to which any material volume of traffic moves, Billings is at a decided disadvantage. There is abundant testimony that various firms and dealers who established business houses at Billings, with the expectation of doing a successful distributing business from that favorably located railroad center in a comparatively new country, have found the business unprofitable, or a losing venture, or a failure, because of the unfavorable and unreasonable rates here in issue.

Defendant urges that this case is a fight between jobbers and that the complaint is an effort on part of jobbers at Billings to secure the territory in question for themselves and to the exclusion of jobbers at points farther east. The competition between jobbers and jobbing centers is very keen. Doubtless it will always be so, and it may be doubted if it would be best for either carriers or the country if it were otherwise. No jobbing point is entitled, because of unfair adjustment of rates, to exclusive possession of or complete supremacy in a particular consuming territory. A carrier may not, by the establishment and maintenance of unreasonable rates, give possession of a consuming territory to the jobbers at a point selected or favored by the carrier. Jobbers are shippers, and every shipper is entitled to reasonable rates. Every locality is entitled to reasonable and nondiscriminatory rates, and the dealers at any point are entitled to trade wherever and as far as reasonable rates will permit.

Complainant insists that it makes no complaint of the rates from Omaha or other shipping points, except in so far as they are relatively on a lower basis than the rates to the same points from Billings. The gravamen of the complaint is that the distributive rates charged Billings are unreasonable.

On brief and in argument counsel for complainant asserts that the complaint is chiefly directed to the less-than-carload rates on the first four classes. Carload rates are complained of and some evidence was introduced with respect thereto, but we do not find in the record justification for making any finding as to carload rates.

With respect to the less-than-carload rates on the first four classes from Billings it is to be noted that when tested by all the means which experience has taught are proper to consider, they are distinctly and unusually high. We are not unmindful that these branch lines traverse a new country where transportation conditions are difficult and the volume of business comparatively small. These lines, however, are operated as part of a great and prosperous system. They are feeders to the main line and help to swell the revenue of that line. A part of any great railroad system might be selected and, counting cost of operation and fixed charges, such part be shown to be unprofitable. This, however, would not truly indicate its value and profitableness as an integral part of the whole property. The fact that these branch lines considered by themselves fail to show large earnings does not justify the charging of unreasonable rates. *Interstate Commerce Commission v. L. & N. R. R. Co.*, 118 Fed., 613; *Del. State Grange v. N. Y., P. & N. R. R. Co.*, 4 I. C. C. Rep., 588.

Considering all the facts and circumstances in evidence pertaining to the transportation of less-than-carload shipments from Billings to points on defendant's lines in Wyoming, we are of opinion, and find, that any charge on the first four classes as per Western Classification

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which exceeds the following amounts in cents per 100 pounds is at this time, and for the future will be, unreasonable:

From Billings to—	Classes.			
	1.	2.	3.	4.
Frannie.....	66	59	48	40
Mantua.....	71	62	51	43
Garland.....	71	62	51	43
Ralston.....	74	65	54	44
Corbett.....	77	67	54	46
Cody.....	80	69	55	48
Frannie Junction.....	66	59	48	40
Cowley.....	71	62	51	43
Lovell.....	71	62	51	43
Kane.....	74	65	54	44
Spence.....	80	69	55	48
Greybull.....	83	73	57	49
Basin.....	86	74	59	51
Manderson.....	89	76	62	54
Raliden.....	92	80	65	57
Worland.....	94	83	67	59
Colter.....	94	83	67	59
Neiber.....	98	86	69	61
Chatham.....	98	86	69	61
Kirby.....	100	88	70	63
Parkman.....	63	55	46	38
Ranchester.....	66	59	48	40
Alger.....	69	60	49	41
Sheridan.....	71	62	51	43
Arno.....	74	65	54	44
Verona.....	77	67	54	46
Ulm.....	77	67	54	46
Regis.....	80	69	55	48
Clearmont.....	83	73	57	49
Cadiz.....	83	73	57	49
Arvada.....	89	76	62	54
Lariat.....	89	76	62	54
Croton.....	92	80	65	57
Felix.....	94	83	67	59
Oriva.....	96	86	69	61
Sparta.....	98	86	69	61
Gillette.....	100	88	70	63
Minturn.....	103	91	73	64
Rozet.....	103	91	73	64
Wessex.....	106	94	75	66
Moorecroft.....	108	96	75	67
Como.....	108	96	75	67
Thornton.....	111	99	78	69
Upton.....	113	101	78	70
Jerome.....	113	101	78	70
Omaha.....	115	104	80	72
Pedro.....	118	106	83	73
Cambridge.....	121	109	86	76
Newcastle.....	121	109	86	76

Under the circumstances no reparation will be awarded.

At the argument of the case it was stated by counsel for defendant that it is its intention to abandon and tear up the tracks between Toluca and Scribner, Mont., upon the completion of its line north-westerly from Scribner to Fromberg, Mont., a point on the branch line of the Northern Pacific extending in a southerly direction from Billings. This change of route from Billings to the Big Horn Basin, it is stated, will reduce the distance from Billings to all points in the Basin by 62 miles. It is also stated that the establishment of the new route will be followed by a substantial reduction in the present rates from Billings, and that the new line will be built "before the snow flies."

The Sheridan (Wyo.) Chamber of Commerce is an intervener and calls attention to the fact that its members are in competition with complainant's members in shipping to the destinations here involved, more particularly the branch-line points. It alleges that the distance from Sheridan to these branch-line points is uniformly 54 miles greater than from Billings and that, therefore, the full measure of the difference in the rates from Billings and from Sheridan should appear in the rates to Toluca and should remain constant to the other points. In fact, under the present adjustment the difference in rates from Sheridan increases as the distance from Toluca increases.

This intervener states that it has not attacked the reasonableness *per se* of the rates in question because of its consideration for the new character of the country. It, however, urges that if the time has come for a readjustment of these rates the interests of Sheridan dealers and shippers be considered and protected. It seems inevitable that when defendant's new line from Billings to the Basin country is completed and the line from Toluca to Scribner is abandoned it will not be possible for Sheridan to do a distributing business in the Basin in competition with Billings. The distance from Billings to the Basin will be shortened by some 62 miles, while the difference from Sheridan will be increased some 44 miles, and shipments from Sheridan will pass through Billings. Until such change is made, however, Sheridan is entitled to rates to the Basin points that are reasonable via Toluca, and when compared with the rates from Billings.

As has been seen, the distance from Sheridan to each of such branch line or Basin points is 54 miles greater than from Billings. The terminal services and costs must be substantially the same in either case. We are of the opinion, and so find, that the less-than-carload rates on the first four classes from Sheridan to points on the branch lines south of Toluca should not exceed those from Billings by more than the following in cents per 100 pounds:

Class	1	2	3	4
Differentials ..	8	7	7	6

These are the differences now applied at Frannie, and as all shipments from Sheridan or from Billings to points beyond Frannie must pass through Frannie the differences should not be greater at such more distant points.

Under these circumstances the order herein will require maintenance of the rates prescribed to the branch-line points up to the maximum period of two years, but when defendant is ready to abandon its track between Toluca and Scribner and move the traffic over the new line via Fromberg it may apply for a modification of the order herein as applied to the branch-line points.

An order in conformity with these views will be issued.

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No. 2791.

A. H. MILLAR

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted May 11, 1910. Decided June 3, 1910.

Reparation awarded on complainant's shipments of cabbage from Lewiston, N. Y., to Houston, Tex., to the extent that the rate charged exceeded 49 cents per 100 pounds. The fact that the lower rate had been maintained for several years is in the nature of an admission that it was a fair one under the circumstances. *Ocheltree Grain case*, 18 I. C. C. Rep., 46, cited and followed.

A. H. Millar for complainant in person.

No appearance for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainant shipped two carloads of cabbage, weighing 57,940 pounds, from Lewiston, N. Y., to Houston, Tex., on November 7 and 12, 1907, on which a total charge of \$439.15 was assessed, on the basis of a 74-cent rate west of Suspension Bridge plus a local rate of 4½ cents from Lewiston to that point. The complaint was filed on August 20, 1909.

Prior to August 27, 1907, the date on which the 74-cent rate was established, there had been in effect for several years a rate of 49 cents from Buffalo, Niagara Falls, and Suspension Bridge to destination. At the time the shipments in question moved the rate was 74 cents, but on December 3, 1907, the 49-cent rate was reestablished. On September 7, 1908, the defendants raised this 49-cent rate from Suspension Bridge to 53 cents, which is the present rate. There was no appearance by the defendants at the hearing and no explanation was made of these fluctuations. The fact that the defendants had for some time maintained a rate of 49 cents and soon after these shipments moved reduced the rate from 74 cents back to 49

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cents is in the nature of an admission that this rate was a fair one under the circumstances. *Ocheltree Grain Co. v. St. L. & S. F. R. R. Co.*, 13 I. C. C. Rep., 46.

We therefore find that the rate charged was unreasonable to the extent that it exceeded 49 cents, and reparation will be awarded on this basis in the sum of \$129.18, with interest from February 12, 1907. An order will be entered to that effect.

We will not, upon the record before us, prescribe the future rate.

No. 3069.

SOUTHERN COTTON OIL COMPANY

v.

SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 11, 1910. Decided June 11, 1910.

The initial carrier quoted the lowest rate on cotton linters applicable to shipments moving under a released valuation, but neglected to secure the shipper's signature to such release of valuation. The delivering carrier collected at a higher rate; *Held*, That it is the duty of the initial carrier not only to advise the shipper of the lower rates applying in case of release of valuation, but when informed of the shipper's desire to avail himself of such lower rates to obtain the shipper's signature in accordance with the tariffs. Reparation awarded.

H. W. B. Glover for complainant.

Claudian B. Northrop, R. Walton Moore, and Sloss D. Baxter for Southern Railway Company and Washington Southern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant on December 19, 1909, shipped 68 bales of cotton linters, weighing 31,306 pounds, from Barnwell, S. C., to Pawtucket, R. I., on which defendants assessed a rate of 78½ cents per 100 pounds and collected \$245.78. Complainant alleges that this rate was unreasonable and excessive to the extent that it exceeded 53 cents, and demands reparation in the sum of \$79.86.

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The shipments were sold at a delivered price in Pawtucket of 2½ cents per pound. The rate collected was that without release of valuation and was the same as that on cotton. Prior to the shipment complainant inquired of the initial carrier for the lowest rate. Defendants' answer was that when the value was limited to 2 cents per pound the rail-and-water rate was 53 cents and the all-rail rate 54 cents; thereupon the complainant made out its own bills of lading reading "all rail 53 cents," and these bills of lading were signed by the agent of the carrier with full knowledge on his part that what the shipper desired was the rate on cotton linters released to a valuation of 2 cents per pound. Having this knowledge the agent of the initial carrier neglected to indorse upon the said bills of lading any notation of the released valuation, but did insert in the waybills accompanying the shipments the words "through rate 53 cents." This error of 53 cents instead of 54 cents is not of importance, the main fact being that the shipper and the initial carrier were well aware of the actual value of the commodity, and of the desire on the part of the shipper to obtain the lower rate named in the tariffs.

As held in a prior case brought by this same complainant, *Southern Cotton Oil Co. v. L. & N. R. R. Co.*, 18 I. C. C. Rep., 180, it was the duty of the defendants to have secured the shipper's signature to the released valuation clause. The rate of 53 cents was an error, as that rate applied only by rail and water. The proper rate to have applied on this shipment was 54 cents, which would have resulted in total charges of \$169.05.

Upon consideration of all the facts in this case we are of the opinion, and so find, that the complainant is entitled to reparation in the sum of \$76.73, with interest from May 1, 1909; and it will be so ordered.

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No. 2088.

IN THE MATTER OF JURISDICTION OVER RAIL AND
WATER CARRIERS OPERATING IN ALASKA.

Decided June 6, 1910.

1. The district of Alaska is not a territory of the United States in the sense in which that phrase is used in the act to regulate commerce as amended, and the Commission has therefore no authority or jurisdiction over carriers engaged in transportation of passengers or property within the district of Alaska.
2. The general rule that a special tribunal ought not to enlarge its jurisdiction by intendment but ought to exercise only the powers clearly conferred by statute applies with special if not controlling force to the exercise by the Commission of jurisdiction in Alaska in view of the fact that under the act of May 14, 1898, power to regulate the rates of railroads in Alaska was conferred upon another branch of the government.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

Omitting such parts as are not pertinent to this inquiry, the language of section 1 of the act to regulate commerce, as amended, is as follows:

That the provisions of this act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States, or the District of Columbia, or from one place in a territory to another place in the same territory.

The question that now arises is whether the Congress, in thus expressly defining and limiting the application of the act, intended to bring within its provisions the transportation of passengers or property between points within that part of the United States commonly referred to as Alaska. Has the Commission the same jurisdiction over rail and water lines there engaged in such transportation as it has over rail and water lines engaged in similar transportation within New Mexico and Arizona, the only remaining organized territories, as that phrase is commonly understood, within what may be referred to in general terms as the geographical limits of the United States? In other words, conceding that Alaska is territory of the United States within the meaning of Article IV, section 3, of the Constitution, is it a territory in the sense in which that expression is commonly used in federal legislation?

Such an inquiry, were the time available, might well justify an investigation of the conditions under which the United States successively acquired title over Louisiana, Florida, Texas, the Mexican cession, the Gadsden tract, and is now exercising the rights of sovereignty in the Philippines, Porto Rico, and other islands lately acquired from the Spanish Crown; it would also be not wholly without interest to make an examination of the federal legislation under which some of those territories have been held and governed until finally separated into organized territorial governments and later admitted into the Union as states. It will perhaps suffice, however, for our present purpose, to say that under the authority of the so-called insular cases, as well as under previous announcements by the Supreme Court of the United States, it may now be taken as settled judicial doctrine in this country (a) that the United States, like any other nation, may, as an incident to sovereignty, acquire territory by purchase or as the result of war; (b) that the territory so acquired may be incorporated into the United States and at once become subject to all the provisions of the Constitution; or (c) that such territory may not be incorporated into the United States, but may be held and governed by the Congress, free from some, at least, of the constitutional restraints and restrictions that control in territory that has been distinctly incorporated into the United States. This seems to be the clear inference to be drawn from those cases. And so the insular cases hold in general terms that the Philippines, Porto Rico, and other islands, acquired under the treaty of peace with the Kingdom of Spain, have not been incorporated into the United States, and are not, in a constitutional sense, a part of the United States and subject to all the provisions of the constitution. On the other hand, New Mexico and Arizona, being part of the original territory acquired from Mexico under the treaty of 1848, have been incorporated into the United States and are now organized territories; and their citizens are entitled to all the benefits and are subject to all the restraints of the constitution.

But whether incorporated into the United States or not, all the territory over which the United States is sovereign, and which has not been erected into states, is governed by the Congress under the authority of section 3 of Article IV of the Constitution, which provides as follows:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.

Speaking of this clause, it is said in *De Lima v. Bidwell*, 182 U. S., 1, at page 197, that:

Under this power Congress may deal with territory acquired by treaty; may administer its government as it does that of the District of Columbia; it may establish a local territorial government; it may admit it as a state upon an equal footing with the states, etc. In short, when once acquired by treaty it belongs to the United States and is subject to the disposition of Congress.

It follows therefore that Alaska may be territory of the United States in a purely geographical sense without being a territory in a political sense, or, as above stated by the court, without being a territory with "a local territorial government." To put it in another way, territory of the United States may remain unorganized and be governed directly by the Congress under its power to make "all needful rules and regulations respecting the territory," or it may be set off from the territory of the United States by definite boundaries and organized with a local territorial government having a legislature of its own. When this is done such part of the territory of the United States as lies within the prescribed boundaries becomes a territory of the United States. Having been erected into a local territorial government in that manner, it becomes an organized territory. Assuming therefore that the phrase "a territory of the United States," as used in section 1 of the act, can only refer to the organized territories, it may be well to examine the federal legislation in order to ascertain whether Alaska is to be assigned to that category in connection with the work of this Commission. There are many statutes that relate specially to Alaska; and there are other general enactments relating both to organized and unorganized territories that throw some light upon the question. Reference will first be made to the special legislation:

Alaska was ceded to the United States by treaty with His Majesty the Emperor of all the Russias, proclaimed in this country on June 20, 1867. In that convention the geographical limits of Alaska are defined. By the act of July 27, 1868 (Rev. Stat., second edition, sec. 1954-1976), provisions were made relating to the "unorganized territory of Alaska." It is there described as "*territory* ceded to the United States by the Emperor of Russia." It is also referred to as "Alaska Territory;" but it was not given a legislature or otherwise organized into "a local territorial government." Since that date Alaska, having no legislature of its own, has been the subject of much legislation by the Congress. Under the act of May 17, 1884 (Rev. Stat., 1 Sup., chap. 53, p. 430), by which the first civil government was established for Alaska, it was provided that the ceded *territory* "shall constitute a civil and judicial *district*;" and that the temporary seat of government of said district should be at Sitka. The laws of Oregon were extended over the "district of Alaska," and became its organic law. It is to be noted that in section 14 of that enactment reference is also made to the statutes of the United States, hereinafter again referred to, relating to the "*unorganized Territory of Alaska*."

After gold was discovered in Alaska in 1897 a number of bills were introduced in Congress for the purpose of providing the district of

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Alaska with the form of government prescribed for the territories of the United States, but none of them was enacted into law. By the act of June 4, 1897, provision was made for the appointment of commissioners of deeds and a marshal for the "district of Alaska." By the act of July 24, 1897, a surveyor-general for the "district of Alaska" was authorized. In the act of June 6, 1900 (31 Stat. L., 321), making further provision for a civil government for Alaska, it is again provided that the territory so ceded to the United States shall constitute a "civil and judicial district," with a "temporary seat of government of said district" at Juneau. Full provisions are made in that act for the appointment of a governor, and he is vested with power to "perform generally in and over said district such acts as pertain to the office of governor of a territory so far as the same may be made or become applicable thereto." The powers of Alaskan officials are thus amplified by direct comparison with the powers of like officials of a real territory. And throughout the act Alaska is referred to as the district of Alaska. It will also be observed that the government so provided has no legislature, Congress retaining full powers of legislation and other control as fully as in the District of Columbia.

Rudimentary as the so-called government is, the act by which the government was created in precise terms designates that portion of the territory of the United States as the district of Alaska. And that is now its official title and designation. In the enactment of May 7, 1906 (34 Stat. L., pt. 1, p. 169), providing a delegate to the House of Representatives, Alaska is referred to in the title as the territory of Alaska, and also in the body of the act. Elsewhere in the act the citizens of Alaska are referred to as "the people of the territory of Alaska." But apparently the word "territory" is there used in a loose or descriptive sense, for in the same paragraph, where reference is made to the political status of the Delegate, it is required that he shall be "an inhabitant and qualified voter of the district of Alaska." As a political division it is also referred to in the act as the district of Alaska.

Even so recently as the general appropriations act of 1907 (34 Stat. L., 963) Congress, under the general title "Government in the Territories" makes an appropriation for the "district of Alaska" for the current fiscal year, although under the same head appropriations are also made for the "territory of Arizona," the "territory of New Mexico," and the "territory of Hawaii." In the general appropriation act of 1908 it is referred to as a district. (35 Stat. L., 212.) The act of January 27, 1905 (33 Stat. L., p. 616), providing for the construction and maintenance of roads, schools, and an insane asylum in the district of Alaska, requires all moneys collected from liquor and trade licenses outside "of the incorporated towns in the district

of Alaska," to be deposited in the Treasury of the United States for those purposes. In the amendment to that act of March 3, 1905 (33 Stat. L., p. 1262), Alaska is again spoken of as the district of Alaska. This is also true of an act of the same date (33 Stat. L., p. 1265), prescribing the duties of "the secretary of the district of Alaska."

The first and second sections of chapter 1 of title 1 of the act of March 3, 1899 (30 Stat. L., p. 1253), "to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for said district," are as follows:

SEC. 1. That the district of Alaska consists of that portion of the territory of the United States ceded by Russia by the treaty of March thirtieth, eighteen hundred and sixty-seven.

SEC. 2. That the crimes and offenses defined in this act, committed within the District of Alaska, shall be punished as herein provided.

This rather extensive code, so far as a cursory examination of it has disclosed, contains the words "state" and "territory" only when it distinctly refers, as in section 9, chapter 3, title 2, to the states and organized territories of the United States. When Alaska itself is referred to it is designated as the district of Alaska.

The civil code of Alaska is contained in the act of June 6, 1900 (31 Stat. L., 321), heretofore referred to, in which it is provided, in section 1, that the territory ceded to the United States by Russia, and known as Alaska, shall constitute a civil and judicial district.

The general statutes relating to territories are to be found in title 23 of the Revised Statutes under the designation of "The Territories." This title is divided into three chapters. Chapter 1, entitled "Provisions common to all the territories," provides an executive, legislative, and judicial branch for each organized territory and defines the scope of their several authorities; the governor and the judges of the supreme court, together with the secretary and marshal of the territory, being appointed by the President, and the legislature being elected by the people. There are further provisions limiting the salaries of officers and forbidding the granting of special privileges and private charters, etc., all of which, except where otherwise specifically provided by the Congress, are of controlling force in the organized territories, but not in the district of Alaska. Chapter 2, entitled "Provisions concerning particular organized territories," defines the geographical boundary lines of the several territories of the United States as they were severally organized. The respective sections describing the geographical limits of the several territories contain provisions as follows: "That part of the *territory* of the United States bounded as follows, etc., is erected into a temporary government by the name of the *Territory of New Mexico*," or "is created into a temporary government by the name of the *Territory of Utah*,"

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or "is organized into a temporary government by the name of the *Territory of Washington*," etc. Chapter 3 contains "Provisions relating to the unorganized territory of Alaska." This chapter embodies the provisions of the act of July 27, 1868, heretofore referred to, and some subsequent legislation prior to the act of May 17, 1884, which created the "district of Alaska." As indicating the extent of its unorganized condition at that time it will be observed that it is provided in chapter 3 (sec. 1957) that violations of the provisions of that chapter were to be prosecuted in the district courts of the United States in California or Oregon and in the district courts of what was then the Territory of Washington. Apparently courts were not provided in Alaska until it was made a district under the act of May 17, 1884. Alaska, in chapter 3, was thus officially classified by itself, and as something apart from the organized territories.

Alaska being a district and unorganized territory, has required special legislation by the Congress. It has not at any time been erected into an organized territory, although it is understood that one or more bills were lately pending in the Congress for that purpose. There has been no declaration by the Congress that it is an organized territory. The organized territories carved out of the territory of the United States have severally been declared to be territories and have been organized and empowered to carry on a local government. In nearly all such acts the word "territory" is used both in its geographical and in its political sense. The enabling act of New Mexico, for example, provides that "All that portion of the *territory* of the United States bounded as follows, etc., is erected into a temporary government by the name of the *Territory of New Mexico*." The word thus used in both senses will be found in the enabling acts of other territories. But no such language is to be found anywhere with respect to the district of Alaska. While it is frequently loosely referred to in the statutes as the territory of Alaska, it has never been "erected" into a territory or created or otherwise constituted a territory of the United States as have the organized territories. The act creating a civil government for it expressly and in precise terms designates it as the District of Alaska, and it is so designated in all other federal legislation where accuracy of expression is required.

In its enactments Congress has ordinarily maintained the distinction between the unorganized and the organized territories. When it has desired general legislation to extend to Alaska it is usual to find express provisions to that effect differentiating it from the organized territories. The first section of the bankruptcy act, for example, defines the word "state," as used in the subsequent provisions of the act, as follows: "States shall include the territories, the Indian Terri-

tory, Alaska, and the District of Columbia." On May 14, 1898, the homestead land laws of the United States, already in force in the territories, were extended to the "district of Alaska" (30 Stat. L., 409). As late as June 6, 1900 (31 Stat. L., 658), the coal-land laws were extended to the "district of Alaska." The act of May 30, 1908 (35 Stat. L., 554), relating to the interstate transportation of explosives, does not confine its operation to the states, territories, and the District of Columbia, but extends it to "any state, territory, or district of the United States," thus clearly indicating the understanding in the Congress that the District of Columbia is not the only district in the United States.

The status of Alaska has been considered by the courts in several cases. In *Steamer Coquiltam v. United States*, 163 U. S., 346, a proceeding in admiralty had been brought by the Government in the district court of Alaska for the forfeiture of the steamer for an alleged violation of law. A decree was entered for the Government and an appeal was prosecuted to the circuit court of appeals for the ninth district; and the question was certified to the Supreme Court whether that court had jurisdiction to entertain an appeal from a decree of the district court of Alaska. It was held that while it had no jurisdiction in virtue of its appellate jurisdiction over circuit and district courts mentioned in the act of March 3, 1891, it had jurisdiction in virtue of the general authority conferred by the fifteenth section of that act upon the circuit court of appeals to review the judgment of the supreme court of any territory assigned to such circuit by the Supreme Court of the United States. In its order of May 11, 1891, Alaska had been assigned to the ninth circuit. The court says, page 352:

Alaska is one of the territories of the United States. It was so designated in that order and has always been so regarded. And the court established by the act of 1884 is the court of last resort within the limits of that territory.

In *Rasmussen v. U. S.*, 197 U. S., 516, the plaintiff in error had been indicted for keeping a disreputable house and was tried before a jury of six persons. The result was a verdict and judgment from which an appeal was taken to the Supreme Court of the United States on the constitutional objection that a jury of six persons was not competent to convict. The Attorney-General, in support of the judgment, made two points:

1. Alaska was not incorporated into the United States, and therefore the sixth amendment did not control Congress in legislating for Alaska.

2. That even if Alaska was incorporated into the United States, as it was not an organized territory, therefore the provisions of the sixth amendment were not controlling on Congress when legislating for Alaska.

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In discussing the first point, the court carefully reviews the so-called insular cases, and holds that Alaska has been incorporated into and is a part of the United States. The second point gave the court a direct opportunity to hold that Alaska was an organized territory. But when considering that question, instead of doing so it simply held that the Constitution does apply to Alaska, and therefore a trial and conviction upon a verdict by a jury of six was unlawful. Upon that ground the judgment was reversed and a new trial ordered.

There were two concurring opinions. The one by Mr. Justice Brown is of interest in this connection, because he states (p. 535):

Hitherto we have been content to divide our territories into the organized and unorganized; but now we are asked to introduce a new classification of "incorporated" territories without attempting to define what shall be deemed an incorporation.

Again, at page 532, he says:

If the act of May 17, 1884, providing a civil government for Alaska (23 Stat. L., 24), be regarded as organizing a territory there, it would follow that such territory at once fell within Revised Statutes, section 1891, and the Constitution was extended to it without further action. The first article declares that Alaska "shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided." Had the opinion treated the territory as organized under this act, I should not have dissented from this view, since section 1891 would have applied to it.

It is evident therefore that Mr. Justice Brown understood the decision of the court to hold that Alaska had been incorporated into the United States, but that it was not an organized territory. And a reading of the opinion seems fully to justify that view. Under section 1891, to which Mr. Justice Brown refers, it is provided that "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the *organized territories* and in every territory *hereafter organized* as elsewhere within the United States." Had the court been of the opinion that Alaska was an organized territory, an announcement to that effect would have disposed of the question raised on the argument by the Attorney-General without other discussion than a reference to that section of the Revised Statutes.

The distinction between an organized and an unorganized territory is one that has been commonly understood in the public mind. The special point separating the one from the other is the existence or non-existence of a local legislature. If it has a legislature, it is then a local territorial government and is to be classified with the organized territories. If it has no legislature, it is simply a part of the unorganized territory of the United States with the Congress as its legislature and guardian. It is not in such case a local territorial government. As indicating this general popular understanding of the matter

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it is not without interest to observe that in the Century Dictionary a territory is defined as follows (vol. 8, p. 6248):

In the United States, an organized division of the country not admitted to the complete rights of statehood. Its government is conducted by a governor, judges, and other officers appointed from Washington, *aided by a territorial legislature*. * * * There are now (1898) three organized territories, New Mexico, Arizona, and Oklahoma, and there are also two unorganized territories, the Indian Territory and Alaska.

In Webster's Dictionary the definition is given in this language:

In the United States, a portion of the country not included within the limits of any state, and not yet admitted into the Union as a state, but organized *with a separate legislature*, under a territorial governor and other officers appointed by the President and Senate of the United States.

This view has found very clear expression in one or two adjudicated cases. In *Ex Parte Morgan*, 20 Fed. Rep., 305, the word "territory" as used in the laws of the United States has been judicially defined as follows:

A territory, under the Constitution and laws of the United States, is an inchoate state, a portion of the country not included within the limits of any state, and not yet admitted into the Union as a state, but organized under the laws of Congress, *with a separate legislature*, under a territorial governor and other officers appointed by the President and Senate of the United States.

In *In re Lane*, 135 U. S., 443, the defendant had been indicted and convicted for rape under a federal statute providing that any person committing that offense "in the District of Columbia or other places, *except the territories*, over which the United States has exclusive jurisdiction, shall be guilty of a felony." The offense was committed in Oklahoma, then a part of what was known as "Indian Territory." The defendant contended that Indian Territory was a territory within the exception of the statute above mentioned, and that his conviction under that statute was therefore erroneous, because the statute did not apply in the territories. The Supreme Court, in disposing of the contention, uses language that seems to control our disposition of this question:

But we think the words "except the territories" have reference exclusively to that system of organized government long existing within the United States, by which certain regions of the country have been erected into civil governments. These governments have an executive, a *legislative*, and a judicial system. They have the powers which all these departments of government have exercised, which are conferred upon them by act of Congress, and their legislative acts are subject to the disapproval of the Congress of the United States.

They are not in any sense independent governments; they have no Senators in Congress and no Representatives in the lower House of that body, except what are called Delegates, with limited functions. Yet they exercise nearly all the powers of government, under what are generally called organic acts, passed by Congress, conferring such powers on them. It is this class of governments, *long known by the name* 19 I. C. C. Rep.

of territories, that the act of Congress excepts from the operation of this statute, while it extends it to all other places over which the United States have exclusive jurisdiction.

Oklahoma was not of this class of territories. *It had no legislative body. It had no government. It had no established or organized system of government for the control of the people within its limits, as the territories of the United States have and always have had.* We are therefore of the opinion that the objection taken on this point by the counsel for prisoner is unsound.

That case judicially determines that a law passed by the Congress of the United States, which excludes all territories of the United States from its operation, did not exclude the so-called Indian Territory, which at that time had no organized form of territorial government embracing a legislative assembly. It was not therefore a territory of the United States. When subsequently organized into a territory under the act of May 2, 1890 (26 Stat. L., 81), the language used was "That all that part of the United States, etc., is hereby erected into a temporary government by the name of Territory of Oklahoma." It was then given a local legislature and became an organized territory—a territory of the United States. Had such a declaration by the Congress been made prior to the defendant's indictment and conviction, his claim of the benefit of the exception of the statute would undoubtedly have been successful.

Under our system there are three traditional stages of government for the territory of the United States: First, where there is no local legislature or other local authority except a governor and other officials appointed by the President and confirmed by the Senate. In such cases the Congress legislates for the community, and there is no local self-government in which the people participate. Second, where by reason of its growth in population and the general progress of the people in intelligence and commerce Congress deems a circumscribed portion of the territory of the United States to be capable of local self-government and has accorded to it the usual and ordinary form of territorial government. The third stage of government for the territory of the United States is when a regularly established territory has so far progressed in population, education, and commercial importance as to be entitled to admission into the Union as a state.

It is undoubtedly true that the Congress, having plenary authority in the government of the territory of the United States, may in its wisdom establish such form of government as it may desire for territory of the United States embraced within defined boundaries. But according to national traditions in respect to such matters the usual and ordinary form of government for a territory of the United States involves the establishment of a local legislature. And successively the several regularly established territories which have now become states or still exist as territories of the United States have been

"erected" by the Congress into territories by giving them local self-government, the best expression of which under our system of government is a local legislature. That feature of local government is the basis which the Congress has established for itself by general law for the organization of a territory of the United States in the sense in which that phrase is commonly used. In section 1846, Chapter I, Title XXIII, of the Revised Statutes it is provided that "The legislative power in each territory shall be vested in the governor and a legislative assembly." The qualifications of its members, their terms of office, their salaries, the method and term of their first election, are prescribed in the sections that follow. After the first election, as is provided in section 1848, "The time, place, and manner of holding elections by the people in any newly created territory, as well as of holding all such elections in territories now organized, shall be prescribed by the laws of each territory." And section 1851 provides that the legislative power of every territory "shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States."

While the several acts creating the several territories may have included special provisions in conflict with these general provisions, the underlying principle upon which the government in each regularly established territory has been based is a legislative assembly by which the people may work out their own policies, and have the opportunity, in the conduct of an elective and representative form of government, to prepare themselves for future statehood. A territory thus organized has a political dignity that does not belong to the first stage of government to which we have alluded. That form of government for the so-called organized territories has long been well understood in this country. It is that form of organized territorial government that the people of the district of Alaska have been demanding in the bills that have been presented to the Congress during the last few years for the purpose of erecting Alaska into a territory of the United States.

The distinction between a territory of the United States and the territory of the United States is well established and has been consistently maintained in our legislative history wherever accuracy of expression is observed in the statutes. A recent instance is found in the new penal code embodied in an act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909. In chapter 3, for example, there is a clear indication of the legislative understanding that the District of Columbia is not our only district. It is there provided that certain acts when committed in "any state, territory, or district" shall be punishable by certain designated fines or terms of imprisonment. This distinction

between a territory and a district is again made in chapter 9 of the same code. In this strict and more accurate sense are the words "territory of the United States" used in the first section of the amended act to regulate commerce. Alaska is still inhabited to a considerable extent geographically by the Eskimo and Indian tribes. Its white population, considering the area of the country, is extremely small. So far the Congress has not considered its population sufficiently stable and homogeneous to maintain and support a local self-government. The Congress therefore continues to legislate for the people of Alaska and has not deemed it wise to accord to them the dignity of the second stage of progress toward statehood by making Alaska a territory of the United States. By statute that part of the public territory has been made the district of Alaska, and a government has been organized for it without a legislative assembly and in a form that differs little except in details from the government of the District of Columbia. The question then is whether this Commission may now deal with it as a territory of the United States. The District of Columbia has been expressly named in the act to regulate commerce. Shall the District of Alaska be brought within its provisions by mere construction?

Reference has been made to *Binns v. United States*, 194 U. S., 486, as conclusive authority for the proposition that Alaska is technically an organized territory. In the special sense in which it is so referred to in that case Alaska is organized, for it has a governor and other officials and a system of laws. But that it is not a territory of the United States regularly organized, either in the traditional or in the sense in which that phrase is used in the act to regulate commerce, seems to be clear. The people of Alaska do not participate either in the making of the laws under which they live or in the selection of the several officials by whom those laws are enforced. They enjoy no semblance of the local self-government that is characteristic of the regularly organized territories as commonly understood.

There is much looseness of expression, as heretofore stated, in the legislation concerning Alaska. For this reason the cases in which its political status has been judicially considered must be examined in the light of the particular statutes to which they relate. In the case last mentioned the question at issue arose under an act of Congress providing a penal code for what the act itself refers to as the district of Alaska. Section 460 of Title II provided that any person or persons "prosecuting or attempting to prosecute any of the following lines of business within the district of Alaska shall first apply for and obtain a license so to do." Subsequent provisions established penalties for the failure to comply with the terms of that section. The plaintiff in error was convicted and, on writ of error to the Supreme Court

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of the United States for a review of the record, the question before the court was whether under Article I of section 8 of the Constitution, providing that all duties, imposts, and excises shall be uniform throughout the United States, Alaska was to be deemed a territory. In the penal code, as in other statutes, Alaska is sometimes loosely referred to as a territory, but throughout the code, where accuracy is required, it is referred to as the district of Alaska.

In its opinion the court calls attention to the fact that the Congress has plenary authority, except as restrained by the Constitution, in all the territory of the United States, and that the form of government for different parts of the territory need not necessarily be the same. It says, as we understand the force and effect of the opinion, that Alaska is an organized territory as fully as the District of Columbia though having a different form of government. And so it is. Alaska in that broad sense is a territory, and it has a form of government. It is therefore an organized territory in the same broad sense. But its organic act, the statute under which its government was organized, differentiates it from the regularly organized territories as fully and completely as the District of Columbia differs from the regularly organized territories. Under that act there was created for the territory within the boundaries of the cession from Russia "a civil and judicial district to be known as the district of Alaska." It is, therefore, a "district" and not a "territory of the United States," just as completely as the District of Columbia is a district and not a territory in the accurate sense that must be assigned historically to that phrase. In other words, Alaska is a district, although when certain statutes have been under consideration the Supreme Court of the United States has also held it to be a territory.

The act to regulate commerce as amended applies its provisions to carriers engaged in the transportation of passengers or property "from one state or territory of the United States or the District of Columbia to any other state or territory of the United States or the District of Columbia." Certainly the ruling in *Binns v. United States*, *supra*, which, as we understand it, deals with the District of Alaska as analogous to the District of Columbia, except in the details of its form of government, does not permit this Commission, when considering a statute that includes the District of Columbia by express reference, to include the District of Alaska within its provisions by mere construction.

While it has long been the tendency of courts, in the interest of justice, to enlarge their jurisdiction by construction in cases of reasonable doubt, a similar course on the part of an administrative or quasi legislative body such as this Commission is, would be of questionable propriety. Being a special tribunal, we ought not in any

event to enlarge our territorial jurisdiction by intendment, but ought to exercise our powers only under the clearly expressed authority of the statute; and this principle applies here with special if not controlling force in view of the fact that under the act of May 14, 1898, the power to regulate the rates of railroads in Alaska was conferred upon another branch of the government. In section 2 of that act it is provided:

That all charges for the transportation of freight and passengers on railroads in the district of Alaska shall be printed and posted as required by section six of an act to regulate commerce as amended on March second, eighteen hundred and eighty-nine, and such rates shall be subject to revision and modification by the Secretary of the Interior.

With respect to the matter of the carriage of passengers and property by railroad, the subject-matter of the law administered by this Commission, the Congress has here directed in express and precise terms that the rates for such transportation within the district of Alaska shall be subject to regulation by one of the executive departments of Government. Although the Interstate Commerce Commission had then been in existence for more than ten years, and special reference is made in the section above quoted to the act under the authority of which it performs its duties, the power to revise freight and passenger rates in the "district of Alaska" was nevertheless vested in the Secretary of the Interior, and as we understand it has been exercised by that department. Even though Alaska has been loosely referred to in some statutes as a territory, and has been said by the Supreme Court of the United States to be a territory as that word is used in some acts, nevertheless with respect to the matter of transportation the Congress here in express terms defines it as the district of Alaska, and that is undoubtedly its official status and designation. Under these circumstances, and without some more definite warrant in the law than we have been able to find for holding that the district of Alaska is a territory of the United States within the meaning of section 1 of the act, we are unable to reach the conclusion that the power to revise and modify the rates of carriers by rail in the district of Alaska has been withdrawn from the Secretary of the Interior and now vests in this Commission. The act is supported and given vigor and efficiency by numerous penal provisions intended to secure obedience and to make it capable of real enforcement. Like other criminal laws these provisions will be strictly construed by the courts, and confusion will necessarily attend any effort on our part to assert jurisdiction where it is not clearly conferred upon the Commission.

We therefore hold that we have no jurisdiction in the district of Alaska under the act to regulate commerce, as amended, and in reaching this conclusion we are not unmindful of the fact that the Congress

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may readily confer that power upon us under clear provision of law, if that has been or is now its desire.

CLEMENTS, *Commissioner*, dissenting:

I am unable to concur in the majority opinion in view of several holdings of the Supreme Court, which I am convinced are diametrically opposed to the conclusions stated.

In *Binns v. United States*, 194 U. S., 486, the Supreme Court said:

It had been theretofore held by this court in *steamer Coquillam v. United States*, 163 U. S., 346-352, that "Alaska is one of the territories of the United States. * * * Nor can it be doubted that it is an organized territory, for the act of May 17, 1884 (23 Stat., 24), entitled "An act providing a civil government for Alaska," provided "that the territory ceded to the United States by Russia by the treaty of March 30, 1867, and known as Alaska, shall constitute a civil and judicial district, the government of which shall be organized and administered as hereinafter provided. * * *"

It must be remembered that Congress, in the government of the territories as well as of the District of Columbia, has plenary power, save as controlled by the provisions of the Constitution; that the form of government it shall establish is not prescribed, and may not necessarily be the same in all the territories. We are accustomed to that generally adopted for the territories, of a quasi state government, with executive, legislative, and judicial officers and a legislature endowed with the power of local taxation and local expenditures, but Congress is not limited to this form. In the District of Columbia it has adopted a different mode of government, and in Alaska still another. It may legislate directly in respect to the local affairs of a territory or transfer the power of such legislation to a legislature elected by the citizens of the territory. It has provided in the District of Columbia for a board of three commissioners, who are the controlling officers of the district. It may intrust to them a large volume of legislative power or it may by direct legislation create the whole body of statutory law applicable thereto. For Alaska Congress has established a government of a different form. It has provided no legislative body, but only executive and judicial officers. It has enacted a penal and civil code, having created no legislative body and provided for no local legislation in respect to the matter of revenue; it has established a revenue system of its own, applicable alone to that territory.

Much emphasis is laid upon the fact that Alaska is not provided with a separate legislative assembly, and this is conceded to be the only other essential element necessary to constitute Alaska "an organized territory." I think it clear from the language used in *Binns v. United States*, *supra*, that this is not essential to the status of "a territory." And to the same effect is *National Bank v. County of Yankton*, 101. U. S., 129, in which the court said:

The territories are but political subdivisions of the outlying dominion of the United States. Their relation to the General Government is much the same as that which counties bear to the respective states, and Congress may legislate for them as a state does for its municipal organizations. * * *

Congress may not only abrogate laws of territorial legislatures, but it may itself legislate directly for the local government. * * * In other words, it has full and complete legislative authority over the people of the territories and all the departments of the territorial governments. It may do for the territories what the people under the Constitution of the United States may do for the states.

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Let us consider what the word "organize" means. The Century Dictionary and Cyclopedia defines the word:

In general, to form into a whole consisting of interdependent parts; coordinate the parts of; systematize; arrange according to a uniform plan or for a given purpose; provide with a definite structure or constitution. Order.

What is an organic act? Simply an act prescribing and describing the limits of a territory, providing a government therefor, and usually ending with the words "is erected into a temporary government by the name of the Territory of Utah," etc.

No matter what the act of May 17, 1884, was called by Congress, whether its title was the "organic act" relating to Alaska, or some other, what did that act accomplish? That is the question upon which the status of Alaska is dependent. The answer is contained in a clause of the first section: "The government of which shall be *organized* and *administered* as hereinafter provided," and that act proceeded accordingly to organize as complete a system of government, the parts of which were "coordinated" and "systematized" and arranged accordingly to as "uniform a plan" and for as "definite a purpose" as was or is any territorial government of the United States. And by the act of June 6, 1900, 31 Stat., 321, Congress amplified and permanently established the civil government for Alaska. It was not necessary to prescribe the limits of the territory of Alaska in either of these acts—that had already been done in the treaty with Russia; it was simply necessary to give it such system of government as seemed best to Congress, and it was thereupon organized as a territorial government just as much as though Congress had said in so many words: "This shall hereafter be known as the organized territory of Alaska," and prescribed the limits of said territory by metes and bounds.

Usually there is a section of the so-called organic acts, under the head "legislative power," providing "that the legislative power and authority of said territory shall be vested in the governor and legislative assembly," but this feature is essentially a matter of discretion with Congress, which the courts have said may organize a territorial government as it sees fit, and the omission to provide a separate legislative assembly for Alaska in no way alters its status as a territory with a completely organized system of government, with executive, legislative, and judicial functions, since Congress acts for Alaska in the place and stead of a local legislative assembly, as the courts have repeatedly held that that body may do.

For these reasons, I am unable to find any authority for the contention that the word "organized," as used in connection with a territory, necessarily signifies the existence of a separate legislative assembly. The language of the courts and of the statutes does not point to that

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meaning, and certainly the common use of the word "organize" does not signify. Whether its legislature be the Congress of the United States, acting for that territory directly, or a local assembly peculiar to the body politic of Alaska—if the legislative functions are exercised and all the other elements of government are there—an organized territorial government exists.

In *United States v. Kazama*, 118 U. S., 379–380, the Supreme Court says:

The territorial governments owe all their powers to the statutes of the United States conferring on them the powers which they exercise, and which are liable to be withdrawn, modified or repealed at any time by Congress.

Now, since Congress can at any time withdraw, modify, or repeal any of the powers or functions which a territorial government exercises, it would be competent for Congress to abolish altogether the local legislative assembly in any existing organized territory. Suppose Congress in the exercise of its power should withdraw from New Mexico its assembly and should itself proceed to act directly as the sole legislature for that territory, without the intervention of any agency, leaving the governor, judiciary, and all the other elements of government untouched. Would this alter the status of New Mexico as an organized territory, revert it back to the status of an unorganized territory, and thus, *ipso facto*, cut off the application of the act to regulate commerce therein? It seems clear to me that such a result would not follow. Such action on the part of Congress certainly would not *disorganize* the government there because it would be just as completely *organized* with Congress acting as the local legislature as it is with a separate and independent legislative assembly.

It is contended that the several acts of Congress by the frequency with which they designate Alaska as the "district of Alaska" indicate that Congress does not regard it as a territory. But it will be found that the designation "territory of Alaska" is more frequently used, and that the instances in which it is used are significant that Congress intends to designate Alaska as a territory when speaking of it as a political unit, whereas the term "district" is used to refer to it as a "judicial district," a "customs-collection district," or as a "land-office district" of Alaska. For example, the act of May 17, 1884, was mainly devoted to the creation of a "judicial district," to extend the territorial district courts to Alaska to create a land-office "district," and to extend the land laws in a limited way to Alaska, and without accurately differentiating between the designation "territory of Alaska" as theretofore fixed by sections 1955–1957 of the Revised Statutes, 1878, and the term "district of Alaska," the latter term was used in the act of 1884 to designate the extent of the "judicial district" and the "land-office district" of Alaska. In the systematic organization

of New Mexico and every other territory, as well as Alaska territory, each of these "districts" exists, and their existence has never heretofore been supposed to abolish the political organization known as the "territory." When Congress has been called upon to legislate for the political organization of Alaska, it has used the usual political name and called it the "territory of Alaska." For example, the act of June, 1896 (29 Stat. L., 267), providing for the payment of clerk hire in the executive departments * * *, "is hereby extended to include the territories of Alaska and Oklahoma." In the act of May 14, 1898, conferring jurisdiction upon the Secretary of the Interior to regulate rates in Alaska, the term "district" is applied to Alaska, but this is simply in harmony with the use of that term by Congress, for the main purpose of this act was to extend the homestead laws to Alaska, and, as has already been stated, Alaska is concededly a land-office district.

It seems clear to me that Congress has expressly recognized the status of Alaska as a territory, subsequent to this act of May 14, 1898, by providing, under date of May 7, 1906, for the election of a Delegate to the House of Representatives from the territory of Alaska. Section 1862, United States Revised Statutes, 1878, provides that "Every territory shall have the right to send a Delegate to the House of Representatives of the United States, to serve during each Congress, who shall be elected by the voters in the territory * * *." It may be conceded that Congress has power to make an exception to this general legislative rule, but since May 7, 1906, the rule has been extended to the territory of Alaska, and in passing the act of that date, providing for a Delegate from the "territory of Alaska," the bill was expressly amended so as to use that designation instead of "district of Alaska," as first appearing in the title thereof.

It may also be remarked that Alaska, "as a territory," has been held to be entitled to the appointment of cadets to the Military Academy in an opinion by the Judge-Advocate-General of the United States, which was approved by the President. So that every department of the Government, executive, legislative, and judicial, has held Alaska to be a territory of the United States. Not a single court or department of the Government has declared the political status of Alaska to be that of a district, and the Commission in deciding that Alaska is not a "territory" repudiates precedents established not only by the Supreme Court, but by every branch of the Federal Government.

I fully agree that, as stated in the majority report, "The distinction between a *territory* of the United States and *the territory* of the United States is well established and has been consistently maintained in our legislative history wherever accuracy of expression is observed in the

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statutes." Accepting this pertinent observation as correct, the deliberate and accurate legislative expression declaring that the act of June, 1896, "is hereby extended to include the territories of Alaska and Oklahoma," each of these is beyond question recognized as "*a territory of the United States.*" To the same effect also is the accurate, unqualified, and authoritative declaration of the Supreme Court in the *Binns case*, that "Alaska is one of the territories of the United States."

The deliberate and discriminating use by Congress of the words "district" and "territory" in the act approved May 7, 1906, is most significant as to its understanding of the status of Alaska. The title of that act is as follows: "An act providing for the election of a delegate to the House of Representatives from the territory of Alaska." The record shows that the Senate having passed a bill providing for the election of a delegate to the House of Representatives from the "district of Alaska" and the House having amended the same by inserting the word "territory" in lieu of the word "district" the bill was considered in conference. The report of the managers on the part of the respective houses was submitted and agreed to, with the result that the words "territory of Alaska" were substituted for "district of Alaska" in the enacting clause and elsewhere where the whole domain of Alaska was referred to.

The Court of Claims in the case of *Grigsby v. United States*, 43 Ct. Cl., 426, said "Alaska is as much a domestic territory as Arizona."

It is beyond question that prior to the passage of the Hepburn Act the Commission had no jurisdiction of carriers or rates of transportation in Alaska. It is equally true that it had no jurisdiction in respect to intraterritorial transportation in New Mexico, Arizona, or any other territory; the original act did not undertake to regulate such transportation in any territory, but by the so-called Hepburn Act of June 29, 1906, the authority of the Commission was extended in general terms to such transportation in all territories and without specific reference by name to either of them.

Absolutely no reason has been suggested to show why this remedial act is not just as essential to the well-being of Alaska as to that of any other part of the United States, and if the expediency of its application is to have weight, I think it will not be seriously questioned that the process which it affords is as necessary to the proper regulation of intraterritorial rates, etc., in Alaska, and to the correction of wrongs, such as that complained of in this case, as in New Mexico or Arizona. Hence why should Congress in amending a law so as to make it more effective as a means of relief to the whole country exclude Alaska from its beneficent application?

The intention of this Government that Alaska should be incorporated into the United States and should thereby have the benefit of the Constitution and of all general laws passed by Congress seems

to have been manifested from the outset, for the treaty by which Alaska was acquired from Russia, declares, in article 3, that—

The inhabitants of the ceded territory shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and shall be maintained and protected in the free enjoyment of their liberty, property, and religion.

And subsequently Congress expressly declared in section 1954 of the Revised Statutes that—

The laws of the United States relating to customs, commerce, and navigation are extended to and over all the mainland, islands, and waters of the territory ceded to the United States by the Emperor of Russia by treaty concluded at Washington on the 30th day of March, anno Domini 1867, so far as the same may be applicable thereto.

It must be apparent from the above provisions that Congress would not exclude this great territory from the benefits of a remedial statute without good and sufficient reason.

Neither do I believe that the limited authority of the Secretary of the Interior respecting rates in Alaska provided for in the law of May 14, 1898, when the status of Alaska was radically different from what it was when the amended act to regulate commerce was passed on June 29, 1906, throws light upon the question of the application of the act to that territory. The debates in Congress show that the only argument for investing the Secretary of the Interior with such authority in 1898 was that the decision of the Supreme Court in the so-called "*Maximum Rate Case*," rendered in the previous year, had so emasculated the act to regulate commerce that it had become ineffective. With the present law in full force all over the country and amended and strengthened largely because of that decision, can it be possible that Congress intended to deny its manifest benefits to this vast and important territory? Surely if we expect to find legislative enactments impelled by the wisdom and reason of men of common sense and having at heart the best interests of Alaska, it must be admitted that Congress could have had in mind no other thing than the application of this remedial statute in Alaska. There is no doubt in my mind that the general repealing clause contained in the act was intended to and did repeal the law of 1898, passed at a time of chaos so far as this subject was concerned, and which I regard as being only temporary in so far as it invested the Secretary of the Interior with authority over railroad rates in Alaska.

It is claimed that the law passed on May 14, 1898, is a "special" and the act to regulate commerce a "general" law. Upon this theory the argument is made that—

in passing a special act the legislature has its attention directed to the special case which the act was made to meet, and considers and provides for all the circumstances of that special case; and having done so, it is not to be considered that the legislature by a subsequent general enactment intended to derogate from the special provisions previously made where it was not mentioned in such enactment.

I think this argument is based upon an erroneous theory. True, the law of May 14, 1898, related solely to Alaska, but it dealt mainly with matters other than the regulation of railroad rates, and the provisions which it is claimed invests the Secretary of the Interior with and divests this Commission of such authority was added as an amendment to the law as it originally passed both Houses of Congress, and is a comparatively minor section. The law of May 14, 1898, was therefore a *general* law, relating to diverse and unrelated subjects, whereas the act to regulate commerce of June 29, 1906 (the date upon which it was first extended to intraterritorial rates), is a *special* law, directed solely to the regulation of railroad rates, etc., and administered by one body to insure its uniform and efficacious application throughout the country.

While the Commission should not undertake to enlarge its jurisdiction beyond the clear provisions of the law, it ought not to hesitate to fully exercise its authority in the performance of the duties imposed upon it. There is no suggestion of doubt that the ends of justice require just as much the application of the same principles and regulation in Alaska as in New Mexico or Arizona. A narrow or overtechnical construction of the law should not be resorted to in any case to rid the Commission of the inconvenience and difficulty incident to the full performance of its duties.

Again, the refusal of the Commission to attempt the exercise of any authority over carriers in Alaska leaves those who would appeal to the Commission for the exercise of such authority in Alaska no means of getting the question before the courts for authoritative determination, since there is no appeal to the courts from a refusal of the Commission to make an order.

I am authorized to say that Commissioners COCKRELL and LANE unite in this dissent.

19 I. C. C. Rep.

Nos. 1084, 1085, and 1086.
GEO. S. LOFTUS
v.
PULLMAN COMPANY ET AL.

Submitted June 17, 1910. Decided June 20, 1910.

After considering applications of defendants and other carriers and matters advanced in support thereof, request for postponement of effective date of orders heretofore made denied, but rehearing granted and Chicago, Milwaukee & St. Paul Railway Company, Northern Pacific Railway Company, and The Atchison, Topeka & Santa Fe Railway Company permitted to intervene. Date for rehearing, however, will not be fixed until orders have been in effect three or four months.

F. B. Daniels and *G. S. Fernald* for Pullman Company.

E. C. Lindley and *J. D. Armstrong* for Great Northern Railway Company.

George R. Peck, *Burton Hanson*, and *William Ellis* for Chicago, Milwaukee & St. Paul Railway Company.

C. W. Bunn and *Charles Donnelly* for Northern Pacific Railway Company.

Robert Dunlap and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

The Pullman and Great Northern companies have filed petitions requesting the Commission to reopen these cases, permit the introduction of additional evidence, and suspend the operation of the orders heretofore made until such evidence has been considered.

Like requests are made by the Chicago, Milwaukee & St. Paul Railway Company, the Northern Pacific Railway Company, and the Atchison, Topeka & Santa Fe Railway Company. These three carriers were not parties to the proceedings before the Commission, but they have filed petitions alleging that they are interested in the subject-matter of the orders and asking permission to intervene and be

19 I. C. C. Rep.

heard in the premises, except that the applications of the Northern Pacific and Atchison companies are confined to cases numbered 1085 and 1086.

The matters involved are rates exacted by the carriers for sleeping-car accommodations, as follows: Case No. 1084 pertains to the rates applied from St. Paul to Chicago, while the other two cases, which have been consolidated, pertain to the rates from St. Paul to Fargo, N. Dak., Grand Forks, N. Dak., Superior, Wis., and Seattle, Wash.

The principal reason advanced by the carriers in support of their applications is a desire to offer evidence concerning matters which have transpired since the cases were submitted for determination, and other evidence which they assume the Commission did not have before it when the orders referred to were made.

It is of course true that the Commission did not consider evidence which was not in existence at the time the orders were made, but the assumption concerning other evidence is unwarranted and appears to be based upon a mistaken view of the duties to be performed by an administrative tribunal. The conclusion of the carriers concerning the latter seems to be founded upon the fact that the evidence was not specifically offered by any of the parties. It is said the burden of proving that the rates complained of are unreasonable is upon the complaining party, and that until, in the judgment of the carriers whose rates are challenged, a *prima facie* case of unreasonableness has been made out, it is not necessary for the carriers to make any defense. This, however, leaves no room for the application of information possessed by members of the regulating tribunal, and in this particular case certain portions of the evidence now offered relate to matters which the Commission has recently investigated extensively, while other portions cover data included in reports and other documents filed by the carriers in the Commission's office. It is true that in form there is a difference, but in substance the distinction is not very material, so far at least as receipts and disbursements of the carriers are concerned. Some of the evidence offered consists of opinions concerning matters which can be definitely ascertained in the future, but the information of the Commission is that the carriers have not secured data from which accurate statements can be made as to the past. Also many of the allegations contained in the petitions are conclusions based upon matters concerning which it has been in the past and is now impossible to obtain definite information.

The evidence offered by the carriers seeking to intervene is similar in character to that which has already been considered by the Commission, except that it pertains to rates and routes other than those directly affected by the orders in question. With the general situation, however, the Commission is, and at the time the orders were made was, reasonably well acquainted.

These orders were made on March 15 of the present year, after an investigation extending over a period of nearly three years, and, notwithstanding the Commission has complete control over its orders and may at any time suspend or modify them, and freely exercises its right to do so when convinced that an error has been made, the carriers here involved have seen fit to remain quiescent until within a few days of the time when the orders, by their terms, are to become effective. This method of procedure is not satisfactory, and, since the proceedings before the Commission pertained to a matter of great importance and wide publicity, appears to be without adequate excuse. Nevertheless, the Commission would now suspend the operation of the orders until such time as the additional evidence referred to could be introduced and passed upon if convinced that such evidence would show the pertinent circumstances and conditions to be materially different from those indicated by the evidence which was considered when the orders were made.

But under all the circumstances the Commission feels constrained to decline to postpone further the effective date of the orders. It will, however, upon the petitions already filed, assign the cases for rehearing, and allow the Chicago, Milwaukee & St. Paul Railway Company, the Northern Pacific Railway Company, and the Atchison, Topeka & Santa Fe Railway Company to intervene; but the date for rehearing will not be fixed until the orders have been in force for a sufficient period of time, say three or four months, to enable the Commission to obtain information concerning their effect.

If the experience of the carriers under the rates named in the orders indicates that a mistake has been made the Commission will not hesitate to make any change it may consider proper.

19 I. C. C. Rep.

No. 2518.
HUMBOLDT STEAMSHIP COMPANY
 v.
WHITE PASS & YUKON ROUTE ET AL.

Submitted January 14, 1910. Decided June 6, 1910.

Following the decision *In the Matter of Jurisdiction over Rail and Water Carriers Operating in Alaska*, 19 I. C. C. Rep., 81, complaint asking for establishment of through routes and joint rates from Seattle, Wash., to points in Alaska dismissed because the Commission is without jurisdiction over carriers operating in Alaska.

Charles D. Drayton and Charles F. Munday for complainant.

Burdett, Thompson & Law for Copper River & Northwestern Railway Company, intervener.

F. C. Elliott for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This proceeding was brought to secure an order requiring defendants to join with complainant in establishing through routes and joint rates from Seattle, Wash., to points reached by defendants' lines, and to cease and desist from alleged unlawful discrimination in the charges assessed for wharf or dock facilities at Skagway, Alaska.

The Humboldt Steamship Company is a corporation organized in 1895 under the laws of California with a capital stock of \$200,000. It operates one steamship, the *Humboldt*, between Seattle and Skagway. The tonnage capacity of this steamer is about 1,075 tons gross, 689 tons net, and she can accommodate 290 passengers, 130 first class and 160 steerage. During the open season the *Humboldt* leaves Seattle for Skagway once in ten days.

The White Pass & Yukon Route is the trade name applied to the route composed of the Pacific & Arctic Railway & Navigation Company, British Columbia Yukon Railway Company, British Yukon Railway Company, and the British Yukon Navigation Company, Limited, which appear to be operated under a common control or arrangement for through carriage. The White Pass & Yukon Route

19 I. C. C. Rep.

extends 20.2 miles through American territory, from Skagway to the international boundary line; the remainder of the rail line is in Canadian territory. Traffic moves by rail from Skagway to White Horse, a distance of 112 miles; thence down the Yukon River to Dawson and other points in Canada and Alaska on steamers operated in connection with the White Pass & Yukon Route. Through rates are in effect between Skagway and Dawson and intermediate points. Very little traffic moves to points on the railroad between Skagway and the international boundary line; the bulk of the through traffic is destined to Dawson and other points in Canada and to Fairbanks and other points in Alaska reached by steamers.

Through routes and joint rates were established between the Humboldt Company and the White Pass & Yukon Route upon the opening of the railroad for traffic in 1899. The Pacific Coast Steamship Company operates two and the Alaska Steamship Company operates three regular steamers between Seattle and Skagway, and under their sailing schedule a boat leaves Seattle about every third day. The defendants join with the companies just named in through routes and joint rates. During 1902 and 1903 the *Humboldt* was operated in conjunction with the Alaska Steamship Company, and from 1903 to 1908 in conjunction with the Pacific Coast Steamship Company. Under this arrangement the Alaska and Pacific companies collected freight money and sold tickets for the Humboldt Company upon a commission basis. Upon the termination of this arrangement, early in 1909, the defendants canceled their through routes and joint rates with the Humboldt Company.

At present freight shipped on the *Humboldt* is billed locally to Skagway. There the defendants rebill the freight to destination and pay the Humboldt Company the difference between the through rate from Seattle and defendants' rate from Skagway to destination. Out of its share the *Humboldt* is obliged to pay \$2 per ton wharfage at Skagway. For example, on Class A goods, which includes general merchandise, the through rate from Seattle to Dawson is \$60 per ton. Defendants' rate from Skagway to Dawson is \$53 per ton, leaving \$7 per ton as the *Humboldt's* proportion, out of which it must pay \$2 wharfage, resulting in net compensation of \$5 per ton. The Alaska and Pacific companies receive \$9 per ton net out of the through rate for the transportation from Seattle to Skagway. On certain commodities the rate from Skagway to Dawson is higher than the through rate from Seattle to Dawson, and the *Humboldt* can engage in the carriage of such traffic only at a loss of the difference between through and local rates.

Freight is transferred at Skagway from steamers to railroad over a dock which belongs to the North Pacific Wharves & Trading Com-

pany, a corporation organized under the laws of Washington. This dock is operated by defendants as a terminal facility. Prior to their cancellation of through-routing arrangements, defendants absorbed the wharfage charges on through traffic carried by the *Humboldt*, and at present they absorb the wharfage charges which accrue on such through traffic brought to Skagway by the Pacific and Alaska companies. On local traffic to Skagway handled by the Pacific and Alaska companies, the wharfage charge is \$1 per ton, but upon all traffic handled by the Humboldt Company the wharfage charge is \$2 per ton.

Beyond the foregoing outline of the situation presented in this case, we deem it unnecessary to state the facts in greater detail, and expressly refrain from passing judgment upon the merits of the controversy, because we are constrained to hold, upon authority of the decision recently announced *In the Matter of Jurisdiction over Rail and Water Carriers Operating in Alaska*, 19 I. C. C. Rep., 81, that the Commission is without jurisdiction to make the order sought by complainant.

19 I. C. C. Rep.

No. 2443.

W. W. RUTLAND AND E. L. RUTLAND, PARTNERS, DOING
BUSINESS AS THE CANADIAN VALLEY GRAIN COM-
PANY,

v.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COM-
PANY ET AL.

Submitted March 11, 1910. Decided June 2, 1910.

The record herein brings the complaint within the principle announced in *Kiel
Woodenware Co. v. C., M. & St. P. Ry. Co.*, 18 I. C. C. Rep., 242, where
reparation was awarded for the failure of a carrier to post a tariff chang-
ing a rate, and upon the authority of that decision complainants are
awarded reparation.

L. F. Bird for complainants.

E. B. Peirce, M. L. Bell, and Wallace T. Hughes for Chicago,
Rock Island & Pacific Railway Company.

S. W. Moore and Fred H. Wood for Kansas City Southern Rail-
way Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The complainants are partners doing business as the Canadian Valley Grain Company, and are here asking damages because of a pecuniary loss alleged to have been sustained by them by reason of the failure of the defendants to post a tariff at Calvin, a point on the line of the Rock Island in the state of Oklahoma, under which a joint rate on snap corn between the points hereinafter mentioned was advanced from 19 cents to 23 cents per 100 pounds. The substantial facts of record have been stipulated by the parties and appear to be that on March 18, 1908, the complainants shipped from Calvin to De Queen, in the state of Arkansas, a carload of that commodity weighing 36,800 pounds, upon which there was collected the sum of \$84.64, based upon a joint rate of 23 cents. On March 24, 1908, the complainants shipped from the same point of origin to Wilton, also in the state of Arkansas, a carload of snap corn weighing 32,800 pounds, upon which charges at the same rate were col-

19 I. C. C. Rep.

lected, amounting to the sum of \$75.44. Had the shipments moved prior to March 18, 1908, the rate legally applicable on both shipments would have been 19 cents; but upon that date, under the terms of a lawful tariff on file with the Commission, the 23-cent rate went into effect.

The complaint turns upon the fact that the tariff that became effective on March 18, 1908, although filed with the Commission, had not been posted for public inspection at Calvin before these shipments moved. A copy of the tariff had been mailed to the agent of the principal defendant at that point with directions to post it in the freight-receiving station, but seems not to have been received by him; and not knowing therefore that the rate on snap corn had been advanced he billed out both carloads at a rate of 19 cents per 100 pounds. The corn had been sold f. o. b. destination on the basis of that rate, which the tariffs still on file at Calvin indicated as the rate then in effect. They assert that had they known that 23 cents was the legal rate the freight charges could and would have been included in the f. o. b. price at destination. They sustained a loss therefore of 4 cents per 100 pounds, or \$27.84 in the aggregate, being the difference between the 23-cent rate legally in effect and the 19-cent rate on the basis of which their delivered price was made.

These facts, which are established by the record, bring the complaint within the principle announced in *Kiel Woodware Co. v. C., M. & St. P. Ry. Co.*, 18 I. C. C. Rep., 242, where reparation was awarded for the failure of a carrier to post a tariff changing a rate; and upon the authority of the decision in that case we find that the complainants are entitled to reparation in the sum of \$27.84, with interest thereon from March 24, 1908.

An order will be entered in conformity with these findings.

19 I. C. C. Rep.

No. 3005.

QUAMMEN & AUSTAD LUMBER COMPANY

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY
COMPANY ET AL.

Submitted April 21, 1910. Decided June 3, 1910.

Complainant claimed reparation on shipment of compo-board on the ground that the rate should not have exceeded that on sash, doors, etc., which constituted part of the carload; but as no witnesses appeared at the hearing and no evidence was produced upon the merits, the complaint must be dismissed without prejudice.

Leonard Brisley for complainant.*F. G. Wright* for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

On October 2, 1908, complainant had shipped from Minneapolis, Minn., to Lemmon, S. Dak., a carload of sash and doors and compo-board, on which charges of \$115.40 were collected on the basis of the minimum weight for the sash and doors of 30,000 pounds at the rate of 31 cents per 100 pounds, freight \$93, and an estimated weight of 3,500 pounds on the compo-board at the fourth class rate of 64 cents, or \$22.40. Reparation is claimed in the sum of \$22.40, this being the difference between the amount actually charged and what the charge would have been had the entire shipment moved at 31 cents per 100 pounds, minimum 30,000 pounds.

Complainant placed with his petition a sample of the compo-board, which is a material made of wood and covered with paper and is used as a substitute for lath and plaster, being nailed directly to the frame of the house. The carriers in their lumber schedule, under the head of "articles when loaded in straight or mixed carloads will take 1 cent per 100 pounds above the lumber rates," specify interior and exterior finishings, such as doors, blinds, stairways, etc., which complainant claims are more subject to damage than compo-

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board. Complainant asserts that compo-board should be included among the articles taking the rate of one cent above lumber, instead of being rated fourth class.

Neither party to the case presented any witnesses at the hearing and there is no evidence before the Commission other than the small exhibit of compo-board and the expense bill covering the shipment. Whatever may be the merits of this complaint, it is clearly evident that the Commission has not before it the presentation of facts, circumstances, and conditions bearing upon the question of the reasonableness of the rate charged, which appears to have been in accordance with the published tariff, necessary to an intelligent and proper determination of the matters in question. Without other showing than that just indicated, we are asked to condemn the existing rate and to establish a just and reasonable rate to be applied in the future and to enter an order awarding reparation, which order and findings may be received in court as *prima facie* evidence of the facts therein stated. We can not upon mere complaint and suggestion justly take such important action.

While it is the duty and practice of the Commission to exhaust its activities in developing the pertinent facts necessary to the full investigation and hearing of complaints before it, it is but reasonable that a party complaining should also take such action as may be within his power to aid the Commission by presenting such evidence as will show the pertinent facts, circumstances, and conditions bearing upon the questions involved.

Upon the showing made the complaint will be dismissed without prejudice. It will be so ordered.

19 I. C. C. Rep.

No. 2820.
AUGUST H. STRAUSS
v.
AMERICAN EXPRESS COMPANY ET AL.

Submitted April 4, 1910. Decided June 3, 1910.

Defendants' refusal to gather and deliver interstate express packages to patrons on Green Bay avenue, in Milwaukee, north of Hadley street, while extending that service to other sections referred to, results in unjust discrimination.

August H. Strauss for complainant in person.

T. B. Harrison, jr., for American Express Company.

Charles W. Stockton for Wells Fargo & Company.

O'Brien, Boardman, Platt & Littleton, and *William W. Collin, jr.*, for United States Express Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a complaint of unjust discrimination at Milwaukee in gathering and delivering express packages shipped to and from interstate points. Complainant's place of business is located on Green Bay avenue, about six and one-half blocks north of Hadley street, to which street free gathering and delivery service is extended in the direction of Green Bay avenue from defendants' general offices in the central part of the city. While defendants' wagons pass up Green Bay avenue three times daily on the way to the Milwaukee Northern Electric Company's depot to meet incoming trains, these wagons are used only for hauling between the depot and defendants' general offices in the city and do not stop en route. As a result shippers in complainant's vicinity are required to pay from 10 to 25 cents to the Rapid Transit Delivery Company, which performs this service. The complaint is based principally on the fact that free gathering and delivery is extended to shippers on Western and Fondulac avenues to a distance of about four miles from defendants' general offices, whereas complainant's place of business is within three miles, and that free service is also extended on the east side of the Milwaukee

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River in a northerly direction to the city limits and as far east as Lake Drive, a distance in that direction as great from the general offices as to the section here involved.

Upon a careful examination of the evidence with reference to the density of population, volume of business, etc., in the respective localities and of all other considerations that enter into the determination of the case we find that the action of the defendants in refusing to gather and deliver interstate express packages to patrons on Green Bay avenue north of Hadley street while extending that service to the other sections referred to results in an unjust discrimination in violation of law. An order will be entered requiring the defendants to cease and desist from this unlawful practice.

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No. 3034.

GAMBLE-ROBINSON COMMISSION COMPANY

v.

ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted May 5, 1910. Decided June 3, 1910.

1. Complainant's contention that rates on apples in carloads from Cedar Gap and Seymour, Mo., to Minneapolis and St. Paul ought not to exceed by more than $1\frac{1}{2}$ cents the rate from Springfield, Mo., not sustained.
2. Rates collected on complainant's shipments of apples from Cedar Gap and Seymour to Minneapolis and St. Paul, to the extent that they exceeded 34 and $34\frac{1}{2}$ cents per 100 pounds, found unreasonable.
3. Upon submission of proper proofs order of reparation herein will be issued.

Wilson, Mercer, Holsinger, Swan & Ware and F. H. Stinchfield for complainant.

M. L. Bell and A. B. Enoch for Chicago, Rock Island & Pacific Railway Company.

Edward A. Haid and F. H. Wood for St. Louis & San Francisco Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This is a proceeding for reparation on 10 carload shipments of apples from Seymour and Cedar Gap, Mo., to Minneapolis and St. Paul, Minn. The shipments moved in October and November, 1906. Claim was presented to the Commission informally in February, 1907. It is contended by defendants that the claim is barred by the limitation provided in the act, because the mere filing of a letter with the Commission does not operate to stay the running of the statute. In this case, however, the letter received by the Commission, dated February 25, 1907, sets forth the precise nature of the claim and had attached to it expense bills showing the shipments and the amount paid. Defendants were therefore duly notified and had opportunity to settle the claim before formal proceedings were begun. Under these circumstances the claim is not barred.

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Seymour and Cedar Gap are located on the line of the St. Louis & San Francisco, hereinafter called the Frisco, extending from Springfield, Mo., to Memphis, Tenn. Cedar Gap is 41 miles southeast of Springfield, and Seymour 35 miles. The shipments in question moved through Springfield to Kansas City and from thence to destination.

The history of the rates in question from Cedar Gap, Seymour, and Springfield to Minneapolis and St. Paul is shown by the following:

PRIOR TO SEPTEMBER 6, 1906.		Cents per 100 pounds.
Seymour.....		34
Cedar Gap.....		34½
Springfield.....		33½

SEPTEMBER 6, 1906.		
Seymour.....		41
Cedar Gap.....		42
Springfield.....		28

AUGUST 6, 1909.		
Seymour.....		31
Cedar Gap.....		31
Springfield.....		28

It is 800 miles by the lines of defendants from Springfield to Minneapolis. The short line is the Chicago Great Western from Kansas City, by which the distance is 741 miles.

It is to be noted that at the time the shipments in question moved the rate from Cedar Gap was 42 cents and from Seymour 41 cents. For many years prior to September 6, 1906, through rates were in effect from Cedar Gap and Seymour to Minneapolis. On that date through rates were canceled and shipments thereafter moved on local rates to Springfield and the through rate beyond. Prior to the date of these shipments the through rate was 34 cents from Seymour and 34½ cents from Cedar Gap. Since that time the rate has been reduced to 31 cents.

It is alleged by complainant that rates from Cedar Gap and Seymour ought not to exceed by more than one cent and one and one-half cents the rate from Springfield, and that the rates charged were unreasonable and discriminatory. Reparation is asked.

So far as the allegation of undue discrimination in favor of Springfield is concerned, we are of opinion that the complaint has not been sustained. Springfield is an important junction point and served by the Missouri Pacific in addition to the Frisco. Conditions of shipment at Cedar Gap and Seymour are not the same as at Springfield. Further than this, Springfield is nearer Minneapolis than either of the other points and seems to be entitled to somewhat lower rates.

Concerning the reasonableness of these rates it is to be observed that for many years the rate was 34 cents from Seymour and 34½ cents from Cedar Gap. Afterwards defendants established a 31-cent rate from both points. The presumption that 34 and 34½ cents were reasonable arises from the voluntary act of the carriers in keeping them in effect for a long period of time and that presumption has not been overcome in our judgment by the evidence presented in this case. Defendants assert that these rates are very low in comparison with carload rates on apples generally throughout the country, and the statement is also made that on a mileage basis the rates in question are lower than were prescribed to Oklahoma points from the Ozark region (in which Seymour and Cedar Gap are situated) in the case of *Ozark Fruit Growers' Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C. Rep., 134. Notwithstanding the contention made in this regard, the carriers have named rates which are lower than those here in question, and the reduction from 34 and 34½ cents to 31 cents, so far as appears from the record, was voluntary.

Under all the circumstances we are of opinion and find that the rates charged were unreasonable to the extent that they exceeded 34 and 34½ cents per 100 pounds and that complainant is entitled to reparation. The amount of reparation, however, can not be determined on this record. It appears that 5 cars were bought by complainant and 5 cars were handled by it on commission. The well-settled rule of the Commission is that the party who has been required to pay an unlawful rate is the party to whom reparation should be awarded, and therefore reparation on the 5 consigned cars must be denied. With respect of the 5 cars bought by complainant and on which it paid the freight, the record does not permit an order for the reason that it does not clearly appear which of the 10 cars were bought by complainant. Upon submission of a statement showing the cars, the weight of the shipments therein, and the points of origin and destination, a proper order will be issued.

19 I. C. C. Rep.

No. 2853.
MENEFEE BROTHERS
v.
VICKSBURG, SHREVEPORT & PACIFIC RAILWAY
COMPANY ET AL.

Submitted January 28, 1910. Decided June 7, 1910.

Defendants' charges on carload of shingles from Monroe, La., to Crowell, Tex., found unreasonable, and reparation awarded. Rate for the future prescribed.

Bryan & Spoonts for complainant.

J. W. Allen for Missouri, Kansas & Texas Railway Company of Texas.

T. F. Steele for Vicksburg, Shreveport & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant seeks reparation on account of charges for shipment of a carload of shingles weighing 45,400 pounds from Monroe, La., to Crowell, Tex., January 19, 1909, on which charges were collected in the sum of \$199.76. At the time the shipment moved the published rate via the route of movement was the joint through class rate of 44 cents. It is alleged that the rate charged was unjust and unreasonable in so far as it exceeded 26½ cents, and reparation is asked in the sum of \$78.32.

Five days after this shipment moved a commodity rate of 26½ cents became effective via the route of movement, but on February 22, 1909, this rate was canceled, and there was established between the same points, but via a different route, a 26½-cent rate, in which, however, the Kansas City, Mexico & Orient refused to join. This had the effect of again making applicable the 44-cent class rate via the route this shipment moved, which rate is still in effect.

The only defendants represented at the hearing were the Vicksburg, Shreveport & Pacific and Missouri, Kansas & Texas, and these lines,
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by their counsel, admit the justness of the claim for reparation. These carriers are also parties to the present commodity rate of 26½ cents established February 22, 1909, via the other route and still in effect.

We find that the rate charged complainant was unjust and unreasonable in so far as it exceeded 26½ cents per 100 pounds, and reparation will be awarded upon that basis in the sum of \$78.32, with interest from February 1, 1909. Defendants will also be required to establish and maintain for the future via the route of movement of this shipment a rate not in excess of 26½ cents per 100 pounds.

An order will be entered accordingly.

19 I. C. C. Rep.

No. 2821.

SAGINAW & MANISTEE LUMBER COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted March 9, 1910. Decided June 7, 1910.

1. Present rates on lumber in carloads from Williams, Flagstaff, and Cliffs, Ariz., to Phoenix, Ariz., are unreasonable to the extent that they exceed 18 cents per 100 pounds.
2. Present joint through rates on lumber from Williams, Flagstaff, and Cliffs to points upon the Phoenix & Eastern Railroad are unreasonable to the extent that they exceed the rates named in the report herein.
3. Complainants insist that defendants are guilty of undue discrimination in their lumber rates to Phoenix and points upon the Phoenix & Eastern because the rates from San Pedro are in many instances lower than those from Williams; but the same carrier does not transport lumber from both Williams and San Pedro. It has already been decided herein that rates from Williams to points upon this line are unreasonable, and the Commission can not assume that the Southern Pacific Company will so reduce its rates from San Pedro as to willfully defeat what has been found just.
4. The common lumber produced at Williams must be sold in southern Arizona if complainants' lumbering operations are to be successfully continued, for it will not bear the cost of transportation by rail to distant markets, and the proportion of common lumber to the higher grades is so great that the manufacture can not be successfully conducted unless the poorer grades can be disposed of in some market at a fair price.
5. Through routes for the transportation of lumber and timber from Williams, Flagstaff, and Cliffs to certain points in Arizona over various of defendant lines established and joint through rates prescribed for the future.

Humphrey, Grant & Baker for complainants.

M. L. Bell, Hawkins & Franklin, and W. O. Barnes for El Paso & Southwestern Company.

P. F. Dunne, O. W. Durbrow, E. S. Ives, and F. O. Dillard for Southern Pacific Company; Maricopa & Phoenix Railroad Company; and Phoenix & Eastern Railroad Company.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company; Santa Fe, Prescott & Phoenix Railway Company; and Arizona & California Railway Company.

F. O. Dillard for Gila Valley, Globe & Northern Railway Company.

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REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainants in this proceeding are the Saginaw & Manistee Lumber Company, of Williams, the Arizona Lumber & Timber Company, of Flagstaff, and the Greenlaw Lumber Company, of Cliffs, all in the territory of Arizona. Each of the complainants is engaged at the point of location in the operation of sawmills; these different points are in near proximity to one another; rates to the destinations in controversy are and by the admission of all the parties should be the same from all the points, and in this discussion Williams will be used as typical of the three.

The business of the complainants is the manufacturing of rough and dressed lumber, and their three plants have a capacity of about 200,000,000 feet annually. The timber from which this lumber is manufactured is located in the northern part of the territory of Arizona and is all within the United States timber reservation in the territory. While the complainants own very large amounts of this timber, they are obliged to log the same under the regulations of the Federal Forest Reserve, and it was said that this added 50 cents per thousand feet to the expense of taking off the logs.

The cost of production at the mills of the complainants is heavy. But little industrial activity is to be found in this section aside from the operations of these sawmills. Labor is inefficient and wages are high. Supplies of all kinds must be brought in by freight and are extremely expensive. The cost of machinery and everything which must be obtained from a distance is excessive, owing to the high freight rates which must be paid. The water problem is a difficult one, the complainants having expended many thousands of dollars in providing reservoirs with which to store water for use in their boilers during the dry season. All this makes the cost of manufacture higher at these points than in most other sections of the United States. The timber itself is not of a high grade. The logs are small, and the per cent of clear lumber obtainable is comparatively low. Of the entire output 75 per cent grades as common.

The clear lumber brings a high price at points of consumption and will bear transportation. This part of the output of the complainants sells in Colorado, Kansas, Nebraska, and points east in competition with fir, spruce, and sugar pine from the Pacific slope and with yellow pine from the south. About 20 per cent of the total product of the complainants is sold east of Albuquerque and is almost entirely high-grade stuff.

The common lumber will not bear transportation and must be marketed in the vicinity. It can be used in the construction of

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buildings and in the mining operations which are carried on extensively in southern Arizona and northern Mexico. There is an ample market in this region for all the lumber manufactured by the complainants and much more were not that market invaded by outside competition.

This competition is mainly from three sources. Mills operating upon the line of the Southern Pacific at interior points in California ship their product south and east via the Southern Pacific to these points of consumption in southern Arizona. This lumber passes in transit through Los Angeles.

Lumber cut in the northwest, in Washington and Oregon, is transported by water to San Pedro, the port of Los Angeles, and is thence taken by rail to southern Arizona. The rail transportation is through Los Angeles and over the line of the Southern Pacific to destination.

Yellow pine from Texas and Louisiana reaches these same points through El Paso. Here the transportation is ordinarily via the lines of the Southern Pacific to El Paso, and from El Paso either by those lines or the lines of the El Paso & Southwestern to destination. Of these three sources of competition that from the northwest through San Pedro seems to be most severely felt by the complainants. Competition from interior mills upon the Southern Pacific is the least forceful.

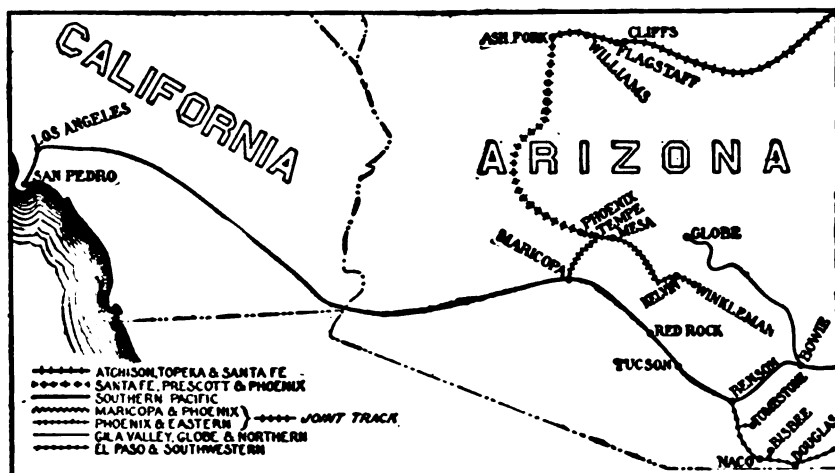
The defendants in this proceeding are the Atchison, Topeka & Santa Fe Railway Company; the Santa Fe, Prescott & Phoenix Railway Company; the Arizona & California Railway Company; the Maricopa & Phoenix Railroad Company; the Phoenix & Eastern Railroad Company; the Gila Valley, Globe & Northern Railway Company; the Southern Pacific Company; and the El Paso & Southwestern Company.

The first three are Santa Fe lines; that is, the stock of the Santa Fe, Prescott & Phoenix, and of the Arizona & California companies is owned by the Atchison, Topeka & Santa Fe Railway Company. The operations of these three companies are independent of one another.

The Maricopa & Phoenix, the Phoenix & Eastern, and the Gila Valley, Globe & Northern are subsidiary companies of the Southern Pacific; i. e., the stock of these corporations is owned by the latter company. Here, again, the operation is distinct. Each company files its own tariffs and maintains an entirely separate operating and accounting existence.

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The questions involved in this proceeding can be best understood by reference to the following map, which shows the situation of these different lines and localities:



The points which the complainants desire to reach are those located upon the Phoenix & Eastern, upon the main line of the Southern Pacific between Maricopa and Bowie, upon the Gila Valley, Globe & Northern, and upon the El Paso & Southwestern. Lumber from the complainants' mills to these various points via the route which the complainants ask to have established would in all cases pass from Williams over the main line of the Santa Fe to Ash Fork, thence over the Santa Fe, Prescott & Phoenix to Phoenix, where it is received by the Southern Pacific lines. Its entire transportation up to Phoenix is therefore in all cases over the lines of the Santa Fe. The rate from Williams to Phoenix is challenged in this proceeding, but the complaint does not put in issue rates to points upon the Santa Fe north of Phoenix or other than Phoenix.

The Phoenix & Eastern extends from Phoenix to Winkelman, a distance of 89 miles. The Maricopa & Phoenix runs from Maricopa upon the main line of the Southern Pacific to Phoenix. From Tempe to Phoenix, a distance of 8 miles, the same track is used by both these companies.

Lumber from the mills of the complainants for points upon the Phoenix & Eastern is received by that line at Phoenix. Lumber from San Pedro for points upon the Phoenix & Eastern is transported over the Southern Pacific main line to Maricopa, thence by the Maricopa & Phoenix to Tempe, where it is received by the Phoenix & Eastern.

The distance from Williams to Tempe is 225 miles; from San Pedro to Tempe, via Maricopa, 439 miles. It will be seen, therefore, that in

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reaching Tempe and other points upon the Phoenix & Eastern the distance from San Pedro is 214 miles greater than from Williams.

The capital stock of the Phoenix & Eastern was formerly owned by the Atchison, Topeka & Santa Fe, but was purchased from that company by the Southern Pacific in the year 1907. While the Santa Fe was the owner of the Phoenix & Eastern, joint rates were established from Williams to points upon this line. As soon as the Southern Pacific acquired the ownership of the Phoenix & Eastern these joint rates were canceled, and for a time no joint rates were in effect. Recently, however, joint rates have been restored and are now in effect from the mills of the complainants via the Santa Fe lines and the Phoenix & Eastern to points upon the latter line. Joint rates have also been established from San Pedro to these same points upon the Phoenix & Eastern, and the complainants insist both that the rates from their mills are unreasonably high and that the relation of rates from their mills as compared with those from San Pedro is unduly discriminatory against them.

The tariffs of all lines in this region name rates on lumber which are distinct from those on timber. Timber is defined as 2 by 6 inches and larger in size. Everything which is not timber is classified as lumber. Rates upon timber are usually materially lower than those upon lumber.

This distinction in naming rates upon lumber is not observed generally. The alleged justification for it here is that the value of timber is much less and that in the mines, where it is mainly used, it comes into competition with unsawed poles, which are cut in the vicinity. The attorney for the complainants, upon the argument, stated that this was wrong and should be corrected; but the president for the principal complainant, as a witness upon the trial, said that, in his opinion, the distinction ought to be observed. It is generally found in the lumber tariffs in that region; no apparent injustice arises out of it to the complainants, and we have, in deciding this case, left these tariffs in this respect as we find them.

Rates to the principal points upon the Phoenix & Eastern from Williams and San Pedro are as follows:

To—	From Williams.			From San Pedro.		
	Distance.	Rate.		Distance.	Rate.	
		Lumber.	Timber.		Lumber.	Timber.
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Menominee.....	232	31	28	446	40	37
Kelvina.....	208	37½	28	512	40	37
Winnetken.....	313	37½	28	527	40	37½

It will be seen that the rate on lumber from Williams is in all cases somewhat lower than from San Pedro, but that the rate on timber is in all cases lower from San Pedro, although the distance is nearly twice as great.

Before considering rates from Williams to points upon the other defendant lines, we may consider the claims of the complainants with respect to these rates to Phoenix and to points upon the Phoenix & Eastern.

The first claim is that these rates are inherently unreasonable. The distance from Williams to Phoenix is 217 miles, 27 miles over the main line of the Santa Fe, and 190 miles over the Santa Fe, Prescott & Phoenix. The average distance from all the mills of the complainants to Ash Fork, the junction point, is approximately 50 miles, making an average distance to Phoenix of about 240 miles.

We have very little information as to the Santa Fe, Prescott & Phoenix touching the cost of construction or operation. It is said that the grades from the mills of the complainant to Phoenix are decidedly in favor of the movement of this traffic. Business upon this line is comparatively light and conditions are such that freight rates should be higher than the average.

We are of the opinion that the present rates from the mills of the complainants to Phoenix are excessive and that those rates ought not to exceed 18 cents per 100 pounds in carloads, minimum 40,000 pounds. The tariffs of the Santa Fe make no distinction between timber and lumber.

We are further of the opinion that the joint through rates from the mills of the complainants to points upon the Phoenix & Eastern, carloads, minimum 40,000 pounds, ought not to exceed the following:

To—	Rate.	
	Lumber.	Timber.
	Crate.	Crate.
Mesa	26	18
Kelvin	27	19
Winkelman	28	20

The complainants claim that the defendants are guilty of undue discrimination in the adjustment of their rates to Phoenix and points upon the Phoenix & Eastern, in that the rates from San Pedro are in many cases lower than those from Williams. They insist that the Commission should determine a fair differential between San Pedro and Williams to these destination points and should enforce that differential by its order.

The average distance from these complaining mills is, as already noted, about 240 miles from Phoenix. The lumber which competes with Williams at Phoenix is cut in the far northwest—in Washington and in Oregon. This lumber is transported by water to San Pedro, a distance of nearly 1,500 miles, and from San Pedro to Phoenix by rail, a distance of 447 miles.

It often happens that the cost of transportation by water from a distant point is less than the cost of carriage by rail from some much nearer point, and in such case the water point, although farther away in miles is still nearer in the actual cost of transportation; but here not only is this lumber carried long distances by water, but is subsequently transported almost twice as far by rail as is that produced at Williams.

There is the further fact that the common lumber produced at Williams must be sold in southern Arizona if these lumbering operations are to be successfully continued, for it will not bear the cost of transportation by rail to distant markets, and the proportion of common lumber to the higher grades is so great that the manufacture can not be successfully conducted unless the poorer grades can be disposed of in some market at a fair price.

The complainants also insist that the quality of their lumber is somewhat inferior to that from the northwest, in that its tensile strength is less and that the cost of manufacture is much greater.

There would seem to be no doubt that if the same carrier transported this lumber from both Williams and San Pedro under exactly the conditions which now obtain, the rate from Williams to Phoenix and to points upon the Phoenix & Eastern should be lower than from San Pedro, and that to maintain from both these points the same rate, certainly to maintain from San Pedro a lower rate would be an undue discrimination, in violation of the act to regulate commerce.

But this service is not performed by the same carrier. The Santa Fe lines transport the lumber from Williams to Phoenix, while the Southern Pacific lines carry it from San Pedro to Phoenix. Manifestly in case of Phoenix it can not be held that either carrier discriminates against the mills of the complainants because it sees fit to make or to refuse to make a rate lower than is inherently reasonable to that destination.

With respect to points upon the Phoenix & Eastern it is somewhat different. The stock of this railroad is owned by the Southern Pacific Company, but the property itself is operated as an independent line. Treating it as independent, it transports lumber from both Williams and San Pedro to stations along its route and may therefore be guilty of discrimination if it accords a more favorable rate

to the one than to the other. Just what effect the ownership of its stock by the Southern Pacific may have we do not attempt at this time to decide. Taking all things into account, we are of the opinion, as already suggested, that rates from Williams to points upon this line ought to be somewhat lower than from San Pedro. We have established a reasonable rate from Williams, and we can not assume that the Southern Pacific Company will so reduce its rates from San Pedro as to wilfully defeat what has been found just.

The complainants ask us to establish through routes and reasonable joint rates to Red Rock, Tucson, and Benson upon the main line of the Southern Pacific; to Tombstone, Bisbee, Naco, and Douglas upon the El Paso & Southwestern, and to Globe, upon the Gila Valley, Globe & Northern. The rates in effect at the present time via this route from Williams and San Pedro, together with the respective distances, are given below:

To—	From Williams.			From San Pedro.		
	Distance.	Rate.		Distance.	Rate.	
		Lumber.	Timber.		Lumber.	Timber.
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Red Rock.....	308	70.5	70.5	493	26.0	21.5
Tucson.....	339	86.5	86.5	520	26.0	21.5
Benson.....	387	101.0	101.0	575	26.0	21.5
Tombstone.....	416	123.0	123.0	600	44.5	22.0
Bisbee.....	451	131.0	131.0	639	51.5	22.5
Naco.....	440	131.0	131.0	627	51.5	21.2
Douglas.....	485	144.0	144.0	663	54.0	21.8
Globe.....	577	146.25	146.25	764	50.0	22.5

It was stated by the Southern Pacific upon the trial that these rates from Williams were merely paper rates and that traffic could not move under them. There seems to be a rate to Tombstone via the Santa Fe east and south to Deming and the El Paso & Southwestern from Deming of 53 cents upon lumber and 42.5 cents upon timber, but the distance via this route is more than 50 per cent greater than that via Maricopa, and no rate could be reasonably established over this longer distance which would enable the complainants to compete with San Pedro at these points.

We find that there is at the present time no reasonable and satisfactory through route between Williams, Cliffs, and Flagstaff, as points of origin, and the above-named points as destinations.

We are of the opinion that through routes for the transportation of lumber from Williams, Flagstaff, and Cliffs, as points of origin, to the above-named places as points of destination should be established via the Atchison, Topeka & Santa Fe; the Southern Pacific; the Santa Fe, Prescott & Phoenix; the Maricopa & Phoenix; the El

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Paso & Southwestern; and the Gila Valley, Globe & Northern, according as the various points are reached by these lines, and that reasonable joint rates, carloads, minimum 40,000 pounds, in cents per 100 pounds, should not exceed the following:

To—	Rate.	
	Lumber.	Timber.
	<i>Cents.</i>	<i>Cents.</i>
Red Rock.....	28	19
Tucson.....	28	19
Benson.....	30	21
Tombstone.....	32	23
Elabe.....	35	24
Naco.....	35	24
Douglas.....	38	25
Globe.....	44	30

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No. 1197.

BANNER MILLING COMPANY

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY.

No. 1535.

SAME

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted June 1, 1910. Decided June 10, 1910.

In the rehearing of these cases, along with the *Jennison case*, 18 I. C. C. Rep., 113, it appeared that either the Commission must allow an advance in the rates on flour and other grain products from Buffalo to New York and New England points, or it must, in substance, require a reduction from all territory west of Buffalo. In view of the whole situation, it seems to the Commission the wisest course to permit the advance from Buffalo. The order in No. 1197 has already expired by its own limitation; but the order in No. 1535, having still a short time to run, will be rescinded.

Shire & Jellinek for complainant.

Clyde Brown for defendants.

REPORT OF THE COMMISSION ON REHEARINGS.

PROUTY, *Commissioner*:

In the above cases, reported in 13 I. C. C. Rep., 31, and 14 I. C. C. Rep., 398, the Commission held that a rate of 11 cents per 100 pounds on flour and other wheat products from Buffalo to New York and New York points, and of 13 cents to New England points, was unreasonable, and ordered a reduction of 1 cent to these destinations. These rates had been advanced from 10 and 12 cents, respectively, in the spring of 1907, and the complainants, who were millers at Buffalo, had attacked in these proceedings the reasonableness of the advance.

While there was evidence tending to show the unreasonableness of the higher rates, the gravamen of the complaint was that the rate

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from Buffalo to these markets had been advanced without a corresponding advance in the rate of their competitors from Minneapolis to the same markets. The defendants answered that the rate from Buffalo was made with reference to rates from Central Freight Association territory alone, and that in the making of these rates no reference whatever was paid to rates from the northwest.

The Commission found that millers at Buffalo engaged in the grinding of spring wheat were in competition with millers at Minneapolis and other northwestern points, and that the defendants in advancing the rate from Buffalo were bound to have in mind the competition between these various localities, and to inquire what effect an advance at Buffalo, without a similar advance from the northwest, might have upon the business of the Buffalo miller.

After a full hearing we held that the advances from Buffalo were unreasonable and ordered a restoration of the former rates. That order has been complied with since November 1, 1908, and is still in effect.

Subsequently to the decision of the *Banner Milling case* complaint was filed in *Jennison Co. v. G. N. Ry. Co.*, 18 I. C. C. Rep., 113, in which it was alleged that rates on flour and other wheat products from Minneapolis to New York were excessive and discriminatory as compared with those from Buffalo to the same destination. The defendants in the *Banner Milling cases* own and control the lake lines operating from Duluth to Buffalo, and they therefore handle from Duluth, through Buffalo, to the seaboard, flour ground at Minneapolis, and also transport wheat from Duluth to Buffalo and the product of that wheat from Buffalo to the seaboard. The Commission found that the lake-and-rail rate from Minneapolis to New York exceeded a reasonable rate by 1½ cents per 100 pounds, and one reason for its conclusion was that the charge exacted by the defendants from Duluth to New York upon the flour was too high as compared with the combined charge upon the wheat from Duluth to Buffalo, plus the charge on flour from Buffalo to New York. A reduction of 1½ cents per 100 pounds in wheat products was ordered in that case.

The defendants in the *Jennison case* filed petition for rehearing, alleging, among other things, that to reduce the lake-and-rail rate from Minneapolis would force extensive reductions in all rail rates not only from Minneapolis and the northwest, but from all milling centers upon the Mississippi River and west. Numerous informal complaints were also received from millers and shippers at various points in the west and middle west, alleging that a change in the rate from Minneapolis without corresponding changes in their rates would work great injury to them. Thereupon, the Commission, of its own motion, entered an order setting down for argument, in con-

nection with this petition for rehearing, the *Banner Milling cases*, and notified the complainants in those cases and also millers in Central Freight Association territory and in territory farther west, that they would be heard at that time. A hearing has been had, at which the claims of all territories have been fully presented to the Commission.

Our conclusion in the *Banner Milling cases* should be adhered to unless, since that decision was reached, conditions have changed, or unless there are now before the Commission new facts not formerly considered. To an extent conditions have altered, and new considerations have been presented.

1. Since the original hearing the expenses of operation upon the part of the carriers have materially increased. Particularly within the last few weeks all the carriers involved in the handling of this traffic from Buffalo have made material advances in the wages of their employees which aggregate several million dollars annually. Without undertaking at this time to determine whether these increases in operating expenses do or do not justify any general advance in the rates of these carriers, this certainly is a change in conditions to which we can not be oblivious in considering this matter at this time.

2. Upon the original hearing it was said that there was no competition between winter-wheat mills in Central Freight Association territory and the mills of the complainants at Buffalo, and that therefore a reduction of the rate might be made at Buffalo without a corresponding reduction at other Central Freight Association points. This was denied by the carriers, who then stated that a reduction at Buffalo would necessitate a corresponding reduction in all Central Freight Association territory. In point of fact, not only did the carriers fail to reduce their rates from Central Freight Association territory but they have recently advanced those rates an additional cent per 100 pounds.

The millers from the middle west were before the Commission upon this hearing. They stated that there is competition between winter and spring wheat, and that a reduction in rate from a spring-wheat milling center like Buffalo or Minneapolis, without a similar reduction from their territory, is an unjust discrimination. It further appears that while most mills in Central Freight Association territory grind winter wheat, there are some which grind spring wheat, notably at Detroit, Cleveland, and Toledo. One of these mills at Detroit has filed complaint, which is now pending before the Commission, alleging that its rates from Detroit are discriminatory as compared with those from Buffalo.

In view of this last advance, it is difficult to see how this Commission can continue in effect its order at Buffalo without taking steps to reduce rates from Central Freight Association territory. Certainly,

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there is to-day an unjustifiable discrimination against spring-wheat mills at other lake ports. We should hesitate at this time to require a general reduction of these flour and grain rates from all this territory of the middle west.

3. In deciding the original case we held that such competition existed between Minneapolis and Buffalo that carriers from Buffalo must consider the effect of their action, in view of this competition, in advancing the Buffalo rate. We did not attempt in that case to determine the relation which should exist between the rate from Minneapolis and Buffalo to these markets of consumption, but we did virtually assume that their relation which had for several years previous existed ought not to be disturbed in the absence of some justification.

Since then this question has been further examined in *Jennison Co. v. Great Northern Ry. Co.*, *supra*, and as a result of that investigation we have reached the conclusion that the lake-and-rail rate from the northwest through Buffalo is excessive, and one reason for this conclusion is that the through transportation charges applied from the northwest to these markets upon the product of the northwest miller is too high in comparison with the combined charge which these same carriers make for the transportation of the wheat to Buffalo and the product from Buffalo. While we do not at this time undertake to establish the relation in rates between Buffalo and Minneapolis, we are now of the impression that Buffalo can still do business if its rate is somewhat advanced, without a corresponding advance from the northwest.

It is claimed, and appears to be true, that to reduce rates from the northwest, as proposed in the *Jennison case*, will disturb the entire rate fabric from milling centers upon the Missouri River and west, and will create a state of discrimination against mills in the middle west unless those rates are also reduced.

We are apparently confronted with this alternative: Either we must allow an advance from Buffalo or we must, in substance, require a reduction from all territory west of Buffalo. In view of the whole situation, it has seemed to us that the wisest course was to permit the advance from Buffalo.

Our order in No. 1197 has already expired by its own limitation. The order in No. 1535 has still a short time to run, and defendants will be relieved from the further effect of that order. It is our understanding that as a consequence the rate from Buffalo to New York and New England points will be advanced 1 cent per 100 pounds, and no more, while other rates will remain at their present figure. To keep control of the situation, as far as possible, No. 1535 will be retained for any further action which may be necessary.

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No. 2842.

RECORD OIL REFINING COMPANY ET AL.

v.

MIDLAND VALLEY RAILROAD COMPANY ET AL.

Submitted May 5, 1910. Decided June 10, 1910.

1. Rate on oil from Muskogee, Okla., to New Orleans, La., of 17½ cents per 100 pounds, carloads, not found to be unreasonable. Complaint dismissed.
2. Any unjust relation of rates outbound from the refineries at Baton Rouge and New Orleans not within the scope of the pleadings in this case.

C. D. Chamberlin for complainant*Edgar A. de Meuls* for Midland Valley Railroad Company.*S. W. Moore, F. H. Moore, F. H. Wood, and Britton & Gray* for Kansas City Southern Railway Company.*J. P. Blair and F. C. Dillard* for Morgan's Louisiana & Texas Railroad & Steamship Company and Louisiana Western Railway Company.*Sidney F. Andrews* for New Orleans & Northeastern Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complainants are Louisiana corporations engaged in refining and merchandizing petroleum and its products at New Orleans, La., and their petition alleges that for the transportation of crude petroleum in tank cars from Muskogee, Okla., to New Orleans, La., there is charged an exorbitant and unreasonably high rate of 17½ cents per 100 pounds, and that they are thereby subjected to great loss and disadvantage in conducting their business; that such rate is in violation of the act to regulate commerce, especially sections 1, 2, and 3 thereof, and that a through rate of 15 cents would be a just and reasonable rate.

Several of defendant carriers do not participate in the rate attacked and are not at the present time transporting the oil of com-

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plainants. The shortest route which could be taken by complainants' oil via which the 17½-cent rate is applicable is as follows: From Muskogee to Panama, Okla., 78 miles, Midland Valley; from Panama to Shreveport, La., 243 miles, Kansas City Southern; from Shreveport to New Orleans (Shrewsbury), 313 miles, Louisiana Railway & Navigation Company; the total distance being 634 miles to Shrewsbury. From Shrewsbury to complainants' plant there is a terminal movement for which complainants pay 1½ cents per 100 pounds, but this charge is not attacked in this complaint.

Prior to January 1, 1909, the rate on the traffic involved in this complaint was 25 cents per 100 pounds. In 1908 a request was made by producers and by refining interests at New Orleans for a lower rate, and the result of the negotiations was that a rate of 17½ cents was published effective January 1, 1909. Under this rate there is absorbed a \$4 switching charge at New Orleans.

There is in process of construction a large Standard Oil refinery at Baton Rouge, La., which had not begun operation at the time this case was heard. A pipe line is in course of construction connecting this refinery with the Muskogee fields. This pipe line was expected to be in operation in April of the current year. Defendants allege that the Standard Oil Company had millions of barrels of oil stored at Muskogee, and that they were given an opportunity to begin movement of this oil to Baton Rouge in the summer of 1909, prior to the opening of the pipe line, and in order to induce this movement a 15-cent rate was established from Muskogee to Baton Rouge. Movement began under this rate in November, 1909. Defendants assert that this 15-cent rate was a temporary competitive rate put in to secure business which would otherwise have waited for the completion of the pipe line. Complainants base their claim for the 15-cent rate to New Orleans on the existence of this 15-cent rate to Baton Rouge, claiming that the rates to both points should be the same.

At the hearing there was introduced an exhibit on behalf of complainants showing the routing provided for in Southwestern Lines' tariff from Muskogee to Baton Rouge and New Orleans, which routing takes a longer mileage for Baton Rouge than for New Orleans. In answer to this, defendants introduced a tariff issued by the Kansas City Southern, an intermediate carrier, which provided for a shorter routing and which gave Baton Rouge a mileage 80 miles shorter than New Orleans. The introduction of this tariff was a surprise to complainants, who had attempted to show that the carriers were charging a higher rate to New Orleans, although the mileage was somewhat less than that to Baton Rouge.

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Reference was made by way of comparison to a rate of 15 cents per 100 pounds from Nowata, Okla., to New Orleans under which complainants formerly moved crude petroleum. Owing to the inferior quality of Nowata oil, however, complainants ceased operating under this rate and are now deriving their entire supply from the Muskogee fields. Defendants assert that in addition to the Nowata rate, being practically a one-line haul, all of the lines involved being Gould lines, and not parties to this case, the grade of oil is cheaper and less desirable.

Complainants also refer by way of comparison to a rate of 15 cents per 100 pounds from Muskogee fields to Port Arthur and neighboring Gulf ports, but defendants assert that this rate is forced by the competition of two pipe lines extending from Muskogee to the Gulf.

It appears from the record that the chief reason for bringing this complaint is due to a fear of loss of business in competition with the new refinery at Baton Rouge, and in support of this complainants have referred in the record to rates which have recently been established on the product of the Baton Rouge refinery to marketing points now reached by complainant. It is asserted that these distributive rates have been largely reduced at the instance of the Baton Rouge refinery. These distributive rates, however, are not attacked in this complaint.

Both the 15-cent rate to Baton Rouge and the 17½-cent rate to New Orleans apply from a number of producing points, the zone in the latter case being larger than the zone for the 15-cent rate. The rate per ton per mile to New Orleans at the 17½-cent rate is 5.52 mills, and a similar computation for the 15-cent rate to Baton Rouge gives a rate per ton per mile of 5.41 mills.

The record shows that under the New Orleans rate there is a free movement both to complainants' plant and to other large shippers in the vicinity of New Orleans, and it does not appear from the record that the 17½-cent rate is an unreasonable charge for the service performed. Its relation to the 15-cent rate to Baton Rouge is not likely to produce unfair advantage in favor of the Baton Rouge refinery, especially when it is borne in mind that the rate from Baton Rouge to New Orleans on refined oil is 3 cents per 100 pounds. The comparison of rates for the purposes of competition at New Orleans is therefore a rate of 18 cents as against a rate of 17½ cents for complainants.

As the Baton Rouge refinery is not yet in operation and has not, therefore, come into competition with complainants, the effect of this competition is conjectural. It seems reasonable to conclude, however, that if complainants should be injured by any unjust relation

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of railroad rates, it would be due to the relation of rates outbound from the refineries, and this will present a question not within the scope of the pleadings in this case and it is impossible to determine at the present time either the existence or extent of such apprehended injury, as there have been no shipments as yet from the Baton Rouge refinery.

On the record we are unable to say that the 17½-cent rate attacked in this proceeding is unjust and unreasonable or that it subjects complainants to any undue disadvantage. The complaint will be dismissed, and it is so ordered.

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No. 3077.

BOTT BROTHERS MANUFACTURING COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY
ET AL.

Submitted March 26, 1910. Decided June 10, 1910.

Present rates on barrel staves and heading from Malden, Mo., and points in Arkansas, to Alexandria, Mo., found unreasonable, and reasonable rates prescribed for the future. Through route established over certain lines. Reparation awarded.

T. L. Montgomery and G. F. Thomas for complainant.

Martin L. Clardy, James C. Jeffery, and Herbert J. Campbell for St. Louis, Iron Mountain & Southern Railway Company and Missouri Pacific Railway Company.

S. H. West and Roy F. Britton for St. Louis Southwestern Railway Company.

Robert & Robert for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The Bott Brothers Manufacturing Company is a copartnership engaged in the manufacture of barrels, woodenware, and cooperage, with its principal plant located at Alexandria, Mo., a point six miles south of Keokuk, Iowa. Complainant also owns and operates a stave factory at Harrisburg, Ark., from which it largely obtains the supply of staves and heads necessary for the operation of the plant at Alexandria. Staves are also purchased at points nearby, such as Paragould, and also at more distant points, of which Fordyce may be taken as an example.

The carriers interested in the transportation of this commodity are the Chicago, Burlington & Quincy Railroad, hereafter designated as the "Burlington," the St. Louis, Iron Mountain & Southern, termed the "Iron Mountain," the St. Louis Southwestern Railway Company, known as the "Cotton Belt," and the Missouri Pacific Railway Company, this latter road being made a party defendant more because of

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its corporate relationship to the Iron Mountain than because of any direct participation in the transportation complained of.

The complaint, as filed, charges that at the present time the defendant carriers are exacting for the transportation of staves from Harrisburg, Paragould, Jonesboro, Brinkley, Clarendon, Little Rock, Pine Bluff, Fordyce, Stephens, Camden, Texarkana, Ark., and Malden, Mo., to Alexandria and Keokuk, rates which are excessive and unreasonable, and asks for the establishment of a through route and joint rate from the first-named point to Alexandria; there are joint rates existing at the present time from the other points named. As amended at the hearing it asks for the awarding of reparation up to the time of the hearing.

It appears that for some fifteen years previous to September, 1908, these defendants had maintained a joint through rate of 17 cents per 100 pounds between Harrisburg and Alexandria, under which the complainant had transported this traffic. On September 1 the Iron Mountain road canceled this joint rate leaving in effect the local combination on St. Louis, which was 12 cents from Harrisburg to St. Louis and 7 cents from St. Louis to Alexandria, producing a through rate of 19 cents. The Burlington had previously accepted as its division of the joint rate, 5 cents from St. Louis, and is still willing to accept that division. The local up to St. Louis was advanced to 14 cents on December 12, 1908, and continued at that figure until June 15, 1909, when it was reduced to 12 cents.

The first question presented to the Commission is whether this present through charge of 19 cents resulting from the combination of the locals is reasonable or whether a through route should be established and joint rate named which is less than the present combination.

The carriers attempt to justify the increased rate on the ground that to name any lower rate on staves than applies on lumber is to leave the matter indefensible. It is a familiar holding of the Commission that ordinarily a through rate like this for a long haul should be less than the sum of the locals. The distance here is 422 miles—256 miles to St. Louis, and 166 miles from St. Louis. Seventeen cents per 100 pounds yields a per ton-mile revenue of 8 mills, which for the transportation of a commodity like this, being substantially lumber, can not be pronounced low. The mere fact that the Burlington is willing to accept a given division is in and of itself no sufficient reason for the establishing of the rate, but it is certainly a circumstance which may be considered in the present instance. The Missouri Pacific system maintains from Alexandria to Kansas City, a distance of 539 miles, a rate of 16 cents; to St. Joe, a distance of 607 miles, a rate of 17 cents. At this latter point the complainant meets its most active competition.

We find that at the present time there is no reasonable and satisfactory through route for the transportation of staves and heading from Harrisburg, Ark., to Alexandria, Mo., that such route should be established over the lines of and between the Iron Mountain and the Burlington, and that a rate not exceeding 17 cents per 100 pounds, minimum 30,000 pounds, would be a reasonable rate to be applied as a joint rate over said route.

There remains the further question as to the reasonableness of the joint rates existing from the other points named, which, with the exception of Paragould, are all located on the Cotton Belt, that point being served by both the Iron Mountain and the Cotton Belt. These rates have been variously advanced, ranging from two to five cents over what they had been for some seven years prior to March 1, 1907.

We are of the opinion that the present rates from Malden, Mo., Paragould, Ark., and Jonesboro, Ark., are unreasonable, and that they should not exceed 15 cents, 17 cents, and 17 cents per 100 pounds, respectively, from those several points of origin to Alexandria, Mo., minimum 30,000 pounds. We fail to find that the other rates involved are excessive.

We find that during the period beginning not more than two years before the filing of the complaint and extending down to the date of the hearing, the complainant made shipments of staves and heading from the points in controversy to Alexandria, as follows:

From Harrisburg, 55 carloads, aggregating 2,767,400 pounds; from Paragould, 4 carloads, aggregating 185,150 pounds; from Jonesboro, one carload, aggregating 43,900 pounds.

We further find that the complainant paid upon the above shipments the tariff rates in effect; and that the rates above established as reasonable ought not to have been exceeded at the time these shipments moved.

The movement from Harrisburg and Paragould was over the Iron Mountain and the Burlington, and the complainant has paid, with respect to those shipments, \$590.51 more than it would have paid had the above rates found to be reasonable been assessed. The movement from Jonesboro was via the Cotton Belt and the Burlington, and the complainant has been charged \$8.78 more than as though the rates above established had been assessed. An order for reparation should therefore issue against the above defendants in the sums named, with interest from January 25, 1910.

19 I. C. C. Rep.

No. 2445.

IDAHO LIME COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted February 10, 1910. Decided June 15, 1910.

On complaint seeking reparation for the collection of unreasonable charges by reason of alleged misrouting of a carload of cement shipped from Medicine Lodge, Kans., to Spokane, Wash.; *Held*, That the charge of misrouting is not sustained. Complaint dismissed.

D. E. Twitchell for complainant.

James G. Wilson for Denver & Rio Grande Railroad Company, Oregon Short Line Railroad Company, and Oregon Railroad & Navigation Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

On April 13, 1907, complainant shipped one carload of cement, 44,000 pounds in weight, via the lines of the defendants from Medicine Lodge, Kans., to Spokane, Wash., charges being collected in accordance with the joint Class-C rate of \$1 per 100 pounds, or in the amount of \$440. The complainant alleges that the shipment was tendered to the agent of the Atchison, Topeka & Santa Fe Railway Company at Medicine Lodge without routing instructions, and that the shipment was misrouted by that carrier, thereby subjecting the complainant to excessive charges in the amount of \$228.80. Reparation is asked.

The complainant represents that if the shipment had moved via the line of the Atchison, Topeka & Santa Fe Railway Company to Concordia, Kans., thence via the line of the Chicago, Burlington & Quincy Railroad Company to Billings, Mont., and thence via the Northern Pacific to destination, a total through charge of 48 cents per 100 pounds would have been applicable. It appears, however, from an examination of the tariffs, that at the time the shipment was made the rate lawfully applicable via this route, as well as via the route of movement, 19 I. C. C. Rep.

was the joint Class-C rate of \$1 per 100 pounds. Although there was in effect a lower combination of local rates via the route made up of the Atchison, Topeka & Santa Fe, the Burlington, and the Northern Pacific, the \$1 rate was nevertheless lawfully effective via both routes. In view of this fact the Atchison, Topeka & Santa Fe Railway Company can not be held guilty of misrouting.

The complainant does not allege that the rate to which it has been subjected was unreasonable, nor was any evidence submitted on that question. Upon this record, therefore, no relief can be granted. The complaint will be dismissed with leave to the complainant to file an amended petition if it so desires.

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No. 3113.

SAWYER & AUSTIN LUMBER COMPANY

v.

ST LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted March 18, 1910. Decided June 2, 1910.

On the facts shown of record it is found that any rate on box shoos between the points involved in this proceeding in excess of the current rate on yellow-pine lumber between the same points is unreasonable; and also that the rate for the future ought not to exceed the current rate on yellow pine.

Austin & Danaher for complainant.

Martin L. Clardy, James C. Jeffery, and H. G. Herbel for St. Louis,
Iron Mountain & Southern Railway Company.

E. L. Sargent for Texas & Pacific Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The petitioner is engaged in the manufacture of lumber at Pine Bluff, in the state of Arkansas, and complains that while the defendants apply a rate of 18½ cents per 100 pounds for the carriage of lumber and numerous of its products, including lath, sash, and doors, to Fort Worth, in the state of Texas, they demand for the carriage of box shoos to that destination a rate of 22½ cents. The prayer of the petition is that the latter rate may be reduced to the basis of the lumber rate.

The box shoos manufactured by the complainant are made of the lowest grade of yellow pine, the value of which is said to range from \$5 to \$7.50 per 1,000 feet, the average price of all grades of yellow pine being \$13.50 per 1,000 feet, according to statements made of record. The shoos are in the nature of a by-product of sawmills, being cut from inferior or waste lumber, and are pieces of lumber sawed to the required length in order to make boxes of given dimensions. The various pieces are described as end pieces, side pieces,
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tops, and bottoms, and, as we are informed, are shipped by the complainant in bundles of about 20 pieces, end pieces being packed together in one bundle, side pieces in another, and tops and bottoms in still another bundle. There is some conflict in the record as to the value of box shooks made of yellow pine as compared with the value of yellow-pine lumber itself, but apparently the shooks of this complainant are ordinarily of about the same value. As a test of the reasonableness of the rate on box shooks, we attach more importance, however, to the rate applied by these defendants on sash and doors. Although of at least twice the value of box shooks, sash and doors take the lumber rate of 15½ cents between the points in question; and the record gives us no indication that the rate was established to meet any competitive conditions or that it is otherwise regarded by the defendants as less than a normal rate on sash and doors between these points. On box shooks, however, the defendants demand to substantially all points in Texas a rate four cents higher than the lumber rate, notwithstanding the fact, which this record apparently establishes, that the class of shooks manufactured by the complainant will ordinarily load to about 50,000 pounds, while lumber loads, on the average, to about 44,000 pounds. We had not thought that shooks would load more heavily than lumber, but it is so stated and the record apparently establishes the fact by reference to actual movements. We are not advised as to the loading of sash and doors, but it may be assumed that box shooks ordinarily load to better advantage. We understand also that common molding, lath, hoops, staves and heading, shingles, and paving blocks also take the lumber rates between these points; and box shooks, doubtless, load as well as any of these commodities.

Accepting, without special verification, the statements made of record, the history of the rate on box shooks between the points in question is as follows: Prior to November 10, 1909, the rate had been 27 cents per 100 pounds. Upon that date it was reduced to 22½ cents, and this rate has remained in effect until the present time. But on November 18, 1909, only eight days after the establishment of the 22½-cent rate, the defendants herein published a commodity rate of 18½ cents per 100 pounds in a special tariff which expired by its own limitation on February 18, 1910. This rate temporarily superseded the rate of 22½ cents over the lines of the defendant, the latter rate, however, remaining in effect by competing routes. It appears that in the fall of 1909 the complainant had entered into a contract for the sale of from 150 to 250 carloads of box shooks for delivery at Fort Worth during the ensuing year at a price based on a freight rate of 18½ cents, which the complainant, as the result of conferences with the traffic officials of the principal defendant, anticipated would be made effective. The

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record indicates that the principal defendant had arranged with its connections to publish the lumber rate on box shooks, but the connecting lines subsequently withdrew their concurrences because of a reduction which it was feared would ensue in the Texas state rates on box shooks. But the defendants in partial fulfillment of the complainant's wishes established temporarily the special rate of 18½ cents per 100 pounds just referred to. Apparently box shooks to points north of Pine Bluff for several years took a rate even lower than the rate applicable on the lumber from which they are made. At this time they take the same rate. To interstate points south of Pine Bluff box shooks have ordinarily taken a higher rate than that applied on lumber. It was suggested by the defendants in this connection that the rate of 18½ cents on lumber from Pine Bluff to Fort Worth is a competitive rate established to meet a similar rate to Fort Worth from Beaumont and other points in southern Texas. We know from other sources that Arkansas and Texas yellow pine compete actively in the Texas markets. Nevertheless, sash and doors, shingles, lath, molding, and cooperage stock, as heretofore stated, enjoy the benefit of the lumber rate, and under the circumstances we see no reason why box shooks should take a higher rate.

In *Michigan Box Co. v. F. & P. M. R. R. Co.*, 6 I. C. C. Rep., 335, the rate on box shooks between points in Michigan and points in New York was reduced to the lumber rate; but we do not regard the case as necessarily controlling the disposition of this complaint. It is referred to here only in connection with our general impression that the rates on box shooks, lath, shingles, ties, and certain other rough products of lumber ordinarily do not exceed the rate on the lumber from which they are manufactured. But aside from this not unusual relation of rates on the two commodities, and basing our conclusions wholly upon the facts shown of record, we find that any rate on box shooks between the points here involved that is in excess of the current yellow-pine lumber rate between the same points is unreasonable, and that the rate for the future ought not to exceed the current rate on yellow pine.

An order to that effect will be entered.

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No. 3104.
W. P. CRAIG LUMBER COMPANY
v.
VIRGINIAN RAILWAY COMPANY ET AL.

Submitted April 18, 1910. Decided June 3, 1910.

Through rate on lumber from Victoria, Va., to Alliance, Ohio, not found unreasonable. Reparation denied.

No appearance for complainant.

E. W. Knight for Virginian Railway Company.

Henry Wolf Bikle for Norfolk & Portsmouth Belt Line Railroad Company; New York, Philadelphia & Norfolk Railroad Company; Pennsylvania Railroad Company; and Pennsylvania Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

At the hearing in Pittsburgh, April 18, 1910, complainant did not appear, although its office is in that city.

This is a claim for reparation in the amount of \$87.22 on account of alleged unreasonable charges on four carloads of lumber from Victoria, Va., a station 120 miles west of Norfolk, on the Virginian Railway, to Alliance, Ohio, shipped in October, 1909.

The Virginian Railway extends from Norfolk, Va., to Deepwater, W. Va., and was opened for traffic about April, 1909. Since it was completed it has been extending its through routes and joint rates as rapidly as possible to points in the west, including stations in Ohio. At the time these shipments moved it had no joint rates to Alliance, but had established a joint rate to Cleveland and other stations on the Cleveland, Cincinnati, Chicago & St. Louis.

These shipments moved from Victoria to Norfolk, and from there over the Pennsylvania lines, and the carriers via this route are the only defendants. The answer of the Virginian Railway states that complainant directed that the shipment move via this route. The through rate was made up of the local rate of 8 cents from Victoria to

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Norfolk and 16 cents from Norfolk to destination, and a switching charge of \$1.50 per car charged by the Norfolk & Portsmouth Belt Line Railroad Company. The freight could have moved either via Deepwater, at a combination rate of 28½ cents, or via Roanoke and the Norfolk & Western and its connections at a combination rate of 26 cents. Therefore the rate applied on this shipment was the lowest in effect at the time. Recently the Virginian Railway has published a joint rate of 19½ cents from Victoria to Alliance, the same as the joint rate from Victoria to Cleveland and other stations on the Cleveland, Cincinnati, Chicago & St. Louis at the time this shipment moved.

There is a prayer for the establishment of a maximum rate, but the petition alleges that the route over which the shipments actually moved "is a longer and unreasonable one." Complainant evidently desires the route and rate via Deepwater, W. Va., that being the route via which the 19½-cent rate applied to Cleveland and other points. As above stated, the 19½-cent rate via this route has been established. Under the circumstances there would be no occasion for an order continuing that rate in effect, even if the carriers constituting that route were parties defendant.

The only question, therefore, is whether the rates charged over the route the shipments moved are unreasonable. The local rate from Victoria to Norfolk is on the basis of locals along the line of the Virginian Railway and is somewhat less than via its competitor, for the same distance, the Norfolk & Western. There is no complaint of the switching charge at Norfolk. The rate of the Pennsylvania lines from Norfolk to Alliance, Ohio, is in accordance with the general structure of rates on lumber from Norfolk to points west of Pittsburg and has been in effect for a great many years. The complaint will be dismissed.

No. 2876.

WILLIAM CAMERON & COMPANY, INCORPORATED,
v.
HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY
ET AL.

Submitted March 31, 1910. Decided June 10, 1910.

1. Rate charged on shipment of lumber from Davisville, Tex., to Santa Rita, N. Mex., found unreasonable. Reparation awarded.
2. Rate charged on shipment of lumber from Saron, Tex., to Altus, Okla., found unreasonable. Reparation awarded.

O. W. Payne and *W. M. Sleeper* for complainant.

J. R. Christian for Houston, East & West Texas Railway Company.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

J. S. Hershey for Gulf, Colorado & Santa Fe Railway Company.

J. W. Allen for Missouri, Kansas & Texas Railway Company of Texas.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Two complaints involving shipments of lumber have been consolidated in this one case. They were heard together and will be disposed of in one report.

Complainant shipped from Davisville, Tex., a point on the Houston, East & West Texas Railway, to Santa Rita, N. Mex., a point on the Atchison, Topeka & Santa Fe Railway, on September 7, 1907, a carload of lumber weighing 36,500 pounds. Freight charges were collected in two separate payments aggregating \$257.32. Complainant tendered shipment without routing instructions, except as follows: "Care of Santa Fe at El Paso." The originating carrier misrouted the shipment, delivering it to the Atchison, Topeka & Santa Fe at Cleveland, Tex. If it had been routed via the lines taking the lowest combination it would have taken a 39-cent rate, made up of 18 cents to El Paso over the Houston, East & West Texas and Galveston, Harrisburg & San Antonio, and 21 cents, El Paso to destination, via the Atchison, Topeka & Santa Fe. Reparation is asked on the basis of the 39-cent rate in the sum of \$114.97, less \$40.15 already refunded.

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In its answer the Houston, East & West Texas Railway admits that complainant is entitled to reparation in the sum of \$74.82, the amount claimed, and it assumes sole responsibility for the misrouting.

Upon the record we find that complainant was damaged in so far as the rate charged exceeded charges at a rate of 39 cents per 100 pounds, and reparation will be awarded on that basis against the originating carrier, the Houston, East & West Texas Railway, in the sum of \$74.82, with interest from June 12, 1908.

The second complaint in this case involves a shipment of lumber from Saron, Tex., to Altus, Okla., formerly known as Leger, Okla., December 21, 1907. No routing instructions were given except that complainant stated by indorsement on the bill of lading that the shipment was to move at a 28½-cent rate. Charges were assessed in the sum of \$204.15 on a weight of 49,000 pounds. Complainant asks for reparation on the basis of the 28½-cent rate in the sum of \$64.50.

Defendant Missouri, Kansas & Texas Railway Company of Texas admits that the lowest combination in effect was 33½ cents, made up of 5 cents, Saron to Trinity, and 28½ cents, Trinity to destination, and is willing to make reparation on that basis. Complainant states, however, that any charge in excess of 28½ cents is unreasonable.

Prior to the movement of the shipment a joint rate of 28½ cents had been in effect for some time. It was stated at the hearing that the carriers canceled this rate about two months prior to the shipment for the reason that the lines in Oklahoma and Kansas made excessive demands upon the originating lines for increased divisions. About a year later, and after this shipment moved, the rate was restored, the demands of the lines in Oklahoma and Kansas having been withdrawn and the old divisions accepted. Only a few months after the 28½-cent rate was restored, August 25, 1908, the rate was reduced to 25 cents, and has remained at that figure to the present time.

We hold that at the time of the shipment the complainant was entitled to a through rate of 28½ cents via the defendant and its connections, over which the joint rate had formerly prevailed and now prevails, and that it was the duty of the defendant to have routed the shipment via that route. In point of fact, it sent it by a different and much more expensive route. We find, therefore, that the complainant has been damaged in so far as the rate charged exceeded a rate of 28½ cents, and reparation upon that basis will be awarded in the sum of \$64.50, with interest from June 12, 1908.

The complainant does not claim that at the time of the shipment the rate should have been less than 28½ cents. We have not, therefore, felt called upon to inquire whether even that rate was excessive.

An order will issue in accordance with the above findings.

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No. 3000.

ARLINGTON HEIGHTS FRUIT EXCHANGE ET AL.

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted May 23, 1910. Decided June 11, 1910.

1. Under the conditions shown by the record in this case the Commission fails to find that the present rate on oranges from points in southern California to the east is unreasonable.
2. Present rate on lemons from points in southern California to the east is unreasonable to the extent that it exceeds \$1 per 100 pounds.
3. The Commission is investigating the refrigeration and precooling charges on citrus fruit shipments from California, and all questions relating to those issues are reserved for further consideration and future disposition.
4. If in any case the advanced rate on lemons complained of herein has been paid, reparation will be awarded on the basis of the \$1 rate upon proper proceedings.

Mayer, Meyer, Austrian & Platt; Joseph H. Call and Asa F. Call for complainants.

Robert Dunlap, E. W. Camp, T. J. Norton, and Gardiner Lathrop for Santa Fe system companies.

Harry L. Titus for San Diego, Cuyamaca & Eastern Railway Company and San Diego Southern Railway Company.

F. C. Dillard, W. R. Kelly, P. F. Dunne, C. W. Durbroun, and W. F. Herrin for Southern Pacific Company, Union Pacific Railroad Company, Oregon Railroad & Navigation Company, Oregon Short Line Railroad Company et al.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainants are growers and shippers of citrus fruits in southern California, and their complaint puts the following matters in issue touching the movement of their product to eastern destinations:

1. The reasonableness of the present orange rate of \$1.15.
2. The advance in the lemon rate from \$1 to \$1.15.
3. The reasonableness of the present charges for refrigeration.

The lawfulness of the precooling charge of \$30 per car.

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THE ORANGE RATE.

The taking of the evidence in this proceeding occupied several days, and all branches of the subject have been presented with great fullness. The complainants insist that the present condition of the industry requires a reduction in the rate in order that a wider market may be opened to the increased product, and have introduced testimony showing the state of the orange industry.

In *Consolidated Forwarding Co. v. Southern Pacific Co.*, 10 I. C. C. Rep., 590, the reasonableness of the rate on citrus fruits was before the Commission, and the whole subject was there considered. The report of the Commission in that proceeding states at some length the cost of producing oranges and the profit in that business from about 1901 to 1904. It does not seem necessary to restate those facts here. Since then the cost of raising and putting oranges on board the cars in California has increased. The price received in the east has remained about the same, with perhaps a slight advance. In two respects great improvement has been made in the handling of oranges from the tree to the consumer within that period.

First, and most important, are the investigations of the United States Department of Agriculture under the direction of Professor Powell.

Previous to these investigations the loss from decay in the shipping and marketing of oranges from this locality had been great, often as high as from 20 to 40 per cent. This liability to decay not only occasioned damage by the loss of the spoiled fruit itself, but also injured the selling price of the sound fruit.

Professor Powell ascertained that decay in oranges was entirely due to mechanical injury in their handling. If there was no bruise, there was no decay. His conclusion was that if oranges were picked without bruising there would be no trouble from decayed fruit. To-day these oranges are handled from the tree to the box with great care, and with the result that there is no further loss from this cause. Refrigeration is now resorted to not to prevent decay in transit, but to preserve the appearance of the fruit. It is universally conceded that this has been of almost incalculable benefit to the orange industry of southern California. The greater part of the advantage inures to the grower, but indirectly the carrier benefits, since delay in shipment is no longer attended with serious consequences, and claims for loss and damage due to delay in transit have largely diminished.

There has also been great improvement in the marketing of these oranges. The California orange can be left upon the tree for weeks after it is ripe without serious deterioration, which means that this crop can be picked and sent to market at such time as is most desirable, extending over a period of several months.

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Formerly each grower marketed his own crop, and this was usually done through the agency of commission men in the east. Each grower picked and forwarded his oranges at such time and to such market as he might select. There was no concert of action between different growers, with the result that some markets would be glutted, while in others the demand was good.

At the present time the California Fruit Growers Exchange markets more than 60 per cent of the citrus fruit grown in California. This association has its agents in all markets and watches over the fruit from the packing house to the dealer. It selects the best time for picking and shipping and the best market in which to place the shipment. This has contributed much to the price which the grower receives for his product.

There has also been a decrease in the freight rate, which was \$1.25 per 100 pounds when our former opinion was delivered, while now it is \$1.15 per 100 pounds, a reduction of 10 cents having been made in the year 1907.

These advantages have up to the present time offset the increase in cost of production, so that the profit to the grower seems to be about the same now as then. The complainants insist, however, that in the next few years there will be a large increase in cost of production without compensating advantages.

Below is given a table showing shipments of citrus fruits from California for the years named. Previous to the season of 1897-98 it was said to be impossible to give oranges and lemons separately:

Season.	Number of carloads.		
	Oranges.	Lemons.	Total.
1893-94.....			5,571
1894-95.....			5,022
1895-96.....			7,576
1896-97.....			7,350
1897-98.....	13,987	1,168	15,155
1898-99.....	9,448	908	10,351
1899-1900.....	16,362	1,447	17,809
1900-1901.....	21,173	2,924	24,097
1901-2.....	17,571	2,816	20,387
1902-3.....	21,080	2,649	23,729
1903-4.....	26,684	2,782	29,466
1904-5.....	27,342	4,274	31,616
1905-6.....	23,739	3,789	27,528
1906-7.....	26,319	3,507	29,826
1907-8.....	27,688	4,969	32,657
1908-9.....	33,947	6,150	40,097

This table shows a continuous increase in production, and the testimony indicates that this increase will continue in the immediate future at least, since many acres of oranges and lemons have been planted which are not yet in bearing.

The complainants further insist that this traffic is moved in great volume, in solid train loads, for long distances, and should therefore,

having reference to the circumstances of the transportation, bear a low rate.

For the purpose of showing the conditions of the movement of this business, the Santa Fe lines were required to furnish a statement giving the consist of all freight trains moving east out of divisional points between San Bernardino and Chicago for the first week of March, 1909. This statement shows the number of loaded cars, the number of empty cars, and the number of cars containing citrus fruits in each train.

The week selected is in that period when shipments of oranges are the heaviest; but this movement now continues in considerable amounts through the entire year and is comparatively uniform for five months.

This statement shows that during that time nearly one-third of all the loaded cars moving eastbound upon the line between San Bernardino and Chicago were filled with citrus fruit. One-sixteenth of the entire freight revenues of the Santa Fe system is from the handling of these California citrus fruits.

These trains are not solid orange trains, as stated by the complainants. Most of them leave San Bernardino as solid trains, but the length is reduced for operating reasons beyond the first divisional point, and when other cars are again added they appear to be either empty cars or those loaded with other freight. The movement is, however, equivalent to a solid-train movement in this, that it is a continuous through movement, necessitating but little switching service up to Kansas City, and in trains all the way to Chicago which may be loaded to the maximum capacity of the locomotive. This movement is now by the Belen cut-off, and such trains are handled through by a single engine, with comparatively little helper service.

The above statement shows that the number of loaded cars in east-bound trains during that period averaged 30. Assuming that these cars had been loaded with oranges to the average loading shown by this record, these trains, at \$1.15 per 100 pounds, the present rate, would have earned between San Bernardino and Chicago, which is but slightly less than the average haul of oranges, about \$4.25 per train-mile, against an average train-mile earning upon the Santa Fe system for the year 1909 of but \$3.09. It should be further noted that the haul in case of this movement is something in excess of 2,200 miles, while the average haul upon the Santa Fe during this year was 362 miles.

The minimum is, at the present time, 27,700 pounds. Oranges are loaded six tiers wide by two tiers high, the boxes standing on end. The refrigerator cars in which they are moved contain in each end an ice bunker which holds the ice when the car moves under refrigeration. In the old-style car these bunkers are stationary, and the loading of the car is therefore the same whether moving under ice or under ventila-

tion. These ice bunkers can be so constructed that the side away from the end of the car can be thrown up and fastened in the top of the car, thus leaving available for the loading of oranges when under ventilation the space which is occupied by the ice when under refrigeration. This collapsible bunker, so called, permits an additional loading of 84 and 72 boxes of oranges, according to the style of the car, and of 60 and 72 additional boxes of lemons. There are now in service about 1,000 of these collapsible-bunker cars, and it appeared that some others have been ordered. The cost of changing the permanent to the movable bunker is \$120. The additional cost of providing the collapsible bunker in a new car is \$60.

In the *Consolidated Forwarding case*, above referred to, the Commission held that the orange rate ought not to exceed \$1.10 per 100 pounds upon the minimum then existing, which was substantially the same as at present; but it had no authority at that time to order an observance of this rate. The complainants insist that to-day we ought not only to establish the rate then found reasonable, but to fix as reasonable a much lower rate, which they say should not exceed 85 cents per 100 pounds.

The carriers assert in justification of the present rate that the equipment in which this traffic is handled is more expensive than the ordinary box car, which is true; that the loading is lighter in comparison with the weight of the car, especially when the bunkers are filled with ice, than in case of most traffic, which is also true, and that many cars are returned empty, which is to an extent the fact.

It is said by the carriers that the service is an expedited one, which may properly carry with it a higher rate than would otherwise be proper. The schedule under which this traffic moves is between 10 and 11 miles per hour, including stops at divisional points. This is nothing more than a fair merchandise schedule, and ordinary merchandise is habitually moved in the same trains and upon the same schedule. The service does seem to be regular and dependable, and is at the present time satisfactory to the shippers.

The shipper is accorded what is termed the "diversion" privilege; that is, he may change the point to which his car was consigned while the car is en route, without additional expense, thus enabling him to reach whatever market may be the most desirable. It is conceded by the shippers that this is a privilege of great advantage to them, and it is one which costs the carriers a considerable amount to extend.

The defendants urge with much earnestness that since our decision in 1905 large increases in the expense of operation have occurred, which are not offset by increased advantages in operation. We must ourselves take note of the fact that the Commission is about making reductions in transcontinental rates which may result in a considerable diminution of revenue to these carriers.

"We have carefully considered the evidence relating to those not believe that this man is a person of a bad nature disposition. regard it as highly probable that he is a person of a good nature. Before the advanced we are of the opinion that if he is a person of a good nature was issued by the he disturbed. Under the circumstances of the case, the act of southern Cali- find that the present state of affairs in this proceeding

The cost of producing...
Labor enters largely...
Sicilian grows...
he is paid from...
greater in case of...

[illegible]

In 1903 the general freight agent of the Santa Fe lines upon the Pacific coast wrote to his superior traffic officer upon this subject as follows:

There is no doubt in my mind that if the California lemon growers do not see more encouragement in the future they are going to, a good many of them, let their orchards go back.

It seems to me that we will have to make the rate \$1 per 100 pounds apply all the year and give the lemon growers to understand that we will continue it in effect until they secure United States markets. * * * I think we can defend the lower rate on lemons on account of the competition of foreign lemons. * * * It is up to us now to give the lemon grower a definite answer as to what he may expect for years to come.

In fact in 1904 the \$1 rate was made applicable for the entire year and was continued in effect until November and December, 1909, when tariffs were filed advancing the rate to \$1.15.

The testimony in this case indicates and fairly shows that the cost of placing lemons upon the cars in California is no less, but is rather greater to-day, than in 1904. The lemon growers assert that the increase in their production has been due mainly to the lower rate of freight under which they were better able to meet Sicilian competition.

But even with the dollar rate California has been unable to compete with Sicily upon the Atlantic seaboard. The average price received by California growers east of the Allegheny Mountains is \$1 per box less than the price obtained west of the Missouri River.

The last tariff act increased the duty on lemons from \$1 to \$1.50 per 100 pounds. The complainants assert, and the defendants deny, that this was the occasion of the increase in the freight rate.

The average cost to the defendants of handling lemons is somewhat less than with oranges, for the reason that the average haul is shorter. As just noted, few lemons from California find a market upon the Atlantic seaboard, while practically the entire supply in territory west of the Missouri River is from that source. Oranges, upon the other hand, move in large quantities into these far eastern markets. The complainants insisted that the average haul in case of oranges was 500 miles greater than in case of lemons, and manifestly it is considerably in excess.

The expense of moving citrus fruit under refrigeration is greater than under ventilation, since the weight of the ice is added to the load of the car, and the proportion of oranges moving under refrigeration is greater than of lemons.

Upon the other hand, oranges load somewhat heavier than lemons, the present minimum being 27,600 pounds in case of oranges and 27,200 pounds in case of lemons.

Upon full consideration we are of the opinion that the present lemon rate of \$1.15 is unreasonable, and that the rate ought not to ex-

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ceed \$1 per 100 pounds, with the present minimum weight, said rate to apply to all territory to which the rate of \$1.15 is made applicable by the tariff of the defendants on file.

The Commission is itself investigating the refrigeration and precooling of these citrus-fruit shipments, and all questions relating to those issues are reserved for further consideration and future disposition.

The petition contains a prayer for reparation. Before the advanced rate upon lemons became effective an injunction was issued by the circuit court of the United States for the district of southern California in favor of certain of the complainants in this proceeding against the collection of the advanced rate. It is our understanding that in consequence of these injunction proceedings the \$1 rate has been generally, if not uniformly, collected. If in any case the advanced rate has been paid, reparation will be allowed on the basis of the \$1 rate upon proper proceedings.

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No. 3049.

COMMERCIAL CLUB OF OMAHA

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted May 12, 1910. Decided June 11, 1910.

Rates on lumber from Omaha to certain points in Colorado, Kansas, and Wyoming found to be unreasonable, and lower rates prescribed.

E. J. Mc Vann for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

James E. Kelby for Chicago, Burlington & Quincy Railroad Company.

M. L. Bell for Chicago, Rock Island & Pacific Railway Company.

Edson Rich for Union Pacific Railroad Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This complaint assails the rates on lumber in carloads from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to points in South Dakota on what is known as the Niobrara branch of the Chicago & North Western Railway, extending from Norfolk Junction, Nebr., in a northwesterly direction to Dallas, S. Dak.; to points in Wyoming on the Chicago, Burlington & Quincy Railroad, Torrington to Guernsey and Ironton, inclusive, all lying just west of the Nebraska state line; to points on the main lines of the Union Pacific Railroad from Julesburg, Colo., to Beet Siding spur (La Salle), Colo., and from Tracy, Wyo., to Cheyenne, Wyo.; and to points on the main line of the Chicago, Rock Island & Pacific Railway beginning with Mahaska, Kans., just south of the Nebraska state line, and extending westerly to Roswell, Colo.

Originally the complaint was also directed against the rates of the Chicago & North Western Railway to points in Wyoming from Van Tassell to Casper, and to points in Wyoming on the Wyoming & Northwestern Railway from Cadoma to Lander, but this portion of the complaint was withdrawn on the assurance of defendants that rates to these points would be satisfactorily adjusted.

Discussion of the rates from Omaha is to be understood as including South Omaha. No evidence was introduced with regard to rates at Council Bluffs, as such rates are based on fixed differentials or

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bridge charges higher than Omaha, and any revision of the Omaha rates would necessarily result in corresponding changes from Council Bluffs.

The allegation is that the rates are unreasonable and excessive both in and of themselves, and "by comparison with rates for similar services rendered by the defendants and other carriers under substantially similar circumstances and conditions." Reliance is placed upon comparisons with rates from Lincoln, Nebr., and with various state distance scales, including Nebraska state rates established under the so-called Aldrich law of July 5, 1907, which accomplished a horizontal reduction of 15 per cent in the rates in effect January 1, 1907, and, in addition, stress is laid by complainant upon the fact that through rates from most of the southern producing points are lower than the combinations of the rates from such producing points to Omaha, plus the local rates out.

Complainant's witnesses testified that their competition was largely with fir and white pine from the Pacific coast and the far northwest, and they referred to anticipated increased disadvantage to Omaha owing to reductions of from 5 to 9 cents per 100 pounds in the rates on fir lumber from the northwest to points in South Dakota here complained of, which reductions became effective March 1, 1910. It was admitted that, even with such reductions in the rates from the northwest, there would still remain an advantage in the rates on the southern products, but it was contended that prices f. o. b. mills in the south, \$5 per 1,000 feet higher than at the mills on the Pacific coast, made some difference in favor of the southern mills necessary. It was further shown that 90 per cent of complainant's members' yellow-pine shipments to points on the lines in question are made direct from the south on the through rates; only 10 per cent being shipped from Omaha on the local rates.

Complainant's members keep large stocks of lumber on hand in their Omaha yards. This lumber is better seasoned and drier than that which comes direct from the mills, and includes such materials as heavy joists, timbers, sash, doors, etc., which the mills in the south do not generally have on hand for direct shipment. The advantage of maintaining yards at Omaha is that points of consumption can be supplied more promptly therefrom than from the southern mills direct, and in shipments from Omaha yellow pine can be mixed, under lawful tariff provisions, with manufactured or partly finished articles, such as sash, doors, and millwork, including porch columns, stair-work, etc., regardless of points of origin of same.

Complainant's desire is to extend the territory to which reshipments can be made from Omaha, and, obviously, to secure an adjustment that will enable jobbers at Omaha to operate on a parity with direct shippers from the south.

Defendants deny that the rates are unreasonable *per se*, and contend that they are justified in maintaining through rates less than the combinations of locals, and that complainant is not warranted in expecting carriers to equalize in their rate adjustments disadvantages in market conditions. They insist that while the business of the Omaha lumber dealers is entitled to proper protection, nevertheless any place at which dealers merely handle a product that is produced elsewhere presents, from an economic point of view, a condition entirely different from that presented at the place of production.

Following is a comparison, in cents per 100 pounds, of the present rates of the Chicago & North Western Railway from Omaha to the South Dakota points involved in the complaint, with rates from Omaha to points in Nebraska on the same branch:

Stations.	Miles from Omaha.	Rate from Omaha.	Stations.	Miles from Omaha.	Rate from Omaha.
Niobrara, Nebr.....	182	12.75	St. Charles, S. Dak.....	247	18.5
Monowi, Nebr.....	199	13.6	Herrick, S. Dak.....	252	17.0
Bristow, Nebr.....	212	14.45	Burke, S. Dak.....	258	17.0
Anoka, Nebr.....	227	15.3	Gregory, S. Dak.....	267	17.0
Fairfax, S. Dak.....	234	15.8	Dallas, S. Dak.....	271	17.6
Bonesteel, S. Dak.....	239	16.0			

Following is a comparison, in cents per 100 pounds, of the present rates of the Chicago, Rock Island & Pacific Railway from Omaha to points in Nebraska on the same line with rates to some of the Kansas points involved in the complaint:

Stations.	Miles from Omaha.	Rate from Omaha.	Stations.	Miles from Omaha.	Rate from Omaha.
De Witt, Nebr.....	99	7.65	Mankato, Kans.....	182	12.0
Jansen, Nebr.....	109	7.65	Lebanon, Kans.....	202	12.0
Fairbury, Nebr.....	116	8.5	Phillipsburg, Kans.....	244	15.0
Thompson, Nebr.....	123	8.5	Norton, Kans.....	278	17.0
Mahaaka, Kans.....	130	10.0	Jennings, Kans.....	302	18.5
Belleville, Kans.....	149	12.0	Colby, Kans.....	348	19.0
Courtland, Kans.....	166	12.0	Goodland, Kans.....	384	20.0

Following is a comparison in cents per 100 pounds of the present rates of the Union Pacific Railroad from Omaha to points in Nebraska on the same line with rates to some of the Wyoming and Colorado points involved in the complaint:

Stations.	Miles from Omaha.	Rate from Omaha.	Stations.	Miles from Omaha.	Rate from Omaha.
Sidney, Nebr.....	413	19.55	Paxton, Nebr.....	321	17.85
Dix, Nebr.....	441	19.55	Ogallala, Nebr.....	340	18.7
Bushnell, Nebr.....	462	19.55	Julesburg, Colo.....	371	18.7
Pine Bluff, Wyo.....	472	23.0	Weir, Colo.....	376	19.55
Tracy, Wyo.....	477	23.0	Sedgwick, Colo.....	385	22.0
Burns, Wyo.....	489	23.0	Sterling, Colo.....	428	22.0
Archer, Wyo.....	507	23.0	Union, Colo.....	452	22.0
Cheyenne, Wyo.....	515	23.0	Orchard, Colo.....	488	22.0
North Platte, Nebr.....	287	17.85	Kersey, Colo.....	514	22.0
O'Fallons, Nebr.....	306	17.85	La Salle, Colo.....	523	22.0

Following is a comparison, in cents per 100 pounds, of the present rates of the Chicago, Burlington & Quincy Railroad from Omaha to points in Nebraska on the same line with rates to some of the Wyoming points involved in the complaint:

Stations.	Miles from Omaha.	Rate from Omaha.	Stations.	Miles from Omaha.	Rate from Omaha.
Minatare, Nebr.....	472	21.25	Vaughan, Wyo.....	519	32.0
Mitchell, Nebr.....	490	22.95	Wyncote, Wyo.....	525	33.0
Morrill, Nebr.....	496	23.8	Whalen, Wyo.....	533	35.0
Henry, Nebr.....	504	30.0	Guernsey, Wyo.....	549	36.0
Torrington, Wyo.....	512	31.0			

Complainant alleges that at the points complained of on the Chicago, Burlington & Quincy Railroad the strongest competition is with fir lumber from the northwest, taking a rate of 40 cents per 100 pounds, and from the Inland Empire, taking a rate of 33 cents per 100 pounds. These points are, as has been noted, on a branch line, and it may well be that for like distances the rates should be higher than on main lines in well-developed territory, where the density of traffic is much greater. This observation applies also to the situation on the Niobrara branch of defendant Chicago & North Western.

Indicative of the rate situation at the Colorado points on the Union Pacific Railroad involved in this complaint the following comparison is made:

From southern-producing points to Denver, Colo., 37 cents; from Denver to La Salle, Colo., 7.5 cents; total 44.5 cents. From southern-producing points to Omaha, 26.5 cents; from Omaha to La Salle, Colo., 23 cents; total 49.5 cents.

The rate to Omaha has just been ordered reduced to 25 cents. La Salle is 523 miles from Omaha and 46 miles from Denver. Under the new rate to Omaha the combination at La Salle will be 3.5 cents higher on Omaha than on Denver. Certainly this is not an unreasonable difference against Omaha if any consideration is given to distance from the distributing point and to the rights and interests of dealers at Denver.

There is no good reason why defendants' rates should be so adjusted that the Omaha dealers may merchandise, sort, and mix lumber at Omaha and dispose of it in all this territory on combination rates that are no higher than joint through rates from points of production to the same points of consumption. If Omaha is entitled to such a rate adjustment it follows that other places would have the same right, and such a general adjustment would, apparently, be possible only under the application of the postage-stamp theory of rates.

It will be observed that defendants' rates are consistently graded out from Omaha to the Nebraska state line, and that, with the excep-

tion of the Chicago & North Western's, they increase abruptly as soon as the state line is reached.

Considering the whole situation, we are of the opinion that defendants' rates on lumber and other forest products grouped therewith in carloads from Omaha and South Omaha, Nebr., to the following points, as shown in the first columns of the following tables, are unreasonable and excessive to the extent that they exceed the rates to the same points, as shown in the second columns, and that for the future the rates shown in the second columns should not be exceeded.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY.

[Rates in cents per 100 pounds.]

From Omaha to—	Present rates.	Rates here-in found to be reasonable.	From Omaha to—	Present rates.	Rates here-in found to be reasonable.
Mahaaka, Kans.....	10.0	9.0	Stuttgart, Kans.....	15.5	12.5
Narka, Kans.....	11.0	9.0	Prairie View, Kans.....	16.0	12.5
Munden, Kans.....	11.0	10.0	Almena, Kans.....	16.5	14.0
Belleville, Kans.....	12.0	10.0	Calvert, Kans.....	17.0	14.0
Rydal, Kans.....	12.0	11.0	Norton, Kans.....	17.0	14.0
Scandia, Kans.....	12.0	11.0	Dellvale, Kans.....	17.5	14.5
Courtland, Kans.....	12.0	11.0	Clayton, Kans.....	18.0	15.0
Formoso, Kans.....	12.0	11.5	Jennings, Kans.....	18.5	15.0
Montrose, Kans.....	12.0	11.5	Dresden, Kans.....	18.5	15.5
Mankato, Kans.....	13.0	12.0	Selden, Kans.....	19.0	16.0
Otego, Kans.....	13.0	12.0	Rexford, Kans.....	19.0	17.0
Eabon, Kans.....	13.0	12.0	Gem, Kans.....	19.0	17.0
Lebanon, Kans.....	13.0	12.5	Colby, Kans.....	19.0	17.0
Bellaire, Kans.....	14.0	12.5	Levant, Kans.....	19.5	18.0
Smith Center, Kans.....	14.0	12.5	Brewster, Kans.....	20.0	18.0
Athol, Kans.....	14.5	13.0	Edson, Kans.....	20.0	18.5
Kensington, Kans.....	14.5	13.0	Goodland, Kans.....	20.0	19.0
Agra, Kans.....	14.5	13.0	Ruleton, Kans.....	20.5	20.0
Gretna, Kans.....	15.0	13.0	Kanorado, Kans.....	20.5	20.0
Phillipsburg, Kans.....	15.0	13.5	Burlington, Colo.....	22.0	21.0

UNION PACIFIC RAILROAD.

[Rates in cents per 100 pounds.]

From Omaha to—	Present rates.	Rates here-in found to be reasonable.	From Omaha to—	Present rates.	Rates here-in found to be reasonable.
Tracy, Wyo.....	23.0	21.5	Atwood, Colo.....	23.0	20.5
Egbert, Wyo.....	23.0	21.5	Merino, Colo.....	23.0	21.0
Burns, Wyo.....	23.0	22.0	Beta, Colo.....	23.0	21.0
Hillsdale, Wyo.....	23.0	22.0	Meser, Colo.....	23.0	21.0
Durham, Wyo.....	23.0	22.5	Balzac, Colo.....	23.0	21.0
Archer, Wyo.....	23.0	22.5	Union, Colo.....	23.0	21.0
Cheyenne, Wyo.....	23.0	23.0	Cooper, Colo.....	23.0	21.0
Julesburg, Colo.....	18.7	18.5	Snyder, Colo.....	23.0	21.0
Weir, Colo.....	19.55	19.0	Dodd, Colo.....	23.0	21.5
Adrian, Colo.....	23.0	19.0	Fort Morgan, Colo.....	23.0	21.5
Ovid, Colo.....	23.0	19.0	Narrows, Colo.....	23.0	21.5
Sedgwick, Colo.....	23.0	19.5	Weldon, Colo.....	23.0	22.0
Red Lion, Colo.....	23.0	19.5	Goodrich, Colo.....	23.0	22.0
Crook, Colo.....	23.0	20.0	Orchard, Colo.....	23.0	22.0
Proctor, Colo.....	23.0	20.0	Sublette, Colo.....	23.0	22.0
Powell, Colo.....	23.0	20.0	Mastera, Colo.....	23.0	22.0
Iliff, Colo.....	23.0	20.0	Canton, Colo.....	23.0	22.5
Ford, Colo.....	23.0	20.5	Hardin, Colo.....	23.0	22.5
Hayford, Colo.....	23.0	20.5	Sand Pit Spur, Colo.....	23.0	22.5
Sterling, Colo.....	23.0	20.5	Kuner, Colo.....	23.0	22.5
Beet Sugar Factory Spur, Colo.....	23.0	20.5	Kersey, Colo.....	23.0	22.5
Hall, Colo.....	23.0	20.5	Auburn, Colo.....	23.0	22.5
			Beet Siding Spur, Colo....	23.0	22.5

CHICAGO, BURLINGTON & QUINCY RAILROAD.

[Rates in cents per 100 pounds.]

From Omaha to—	Present rates.	Rates here-in found to be reasonable.	From Omaha to—	Present rates.	Rates here-in found to be reasonable.
Torrington, Wyo.....	31.0	30.5	Whalen, Wyo.....	35.0	32.0
Vaughan, Wyo.....	32.0	31.0	Guernsey, Wyo.....	36.0	33.0
Wyncote, Wyo.....	33.0	31.0	Ironton, Wyo.....	36.0	33.0
Fort Laramie, Wyo.....	34.0	32.0			

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No. 879.
CITY OF SPOKANE, WASH., ET AL.
v.
NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted December 28, 1909. Decided June 7, 1910.

1. The scheme of rates proposed by the Great Northern and the Northern Pacific for transportation of traffic from St. Paul and Chicago to Spokane, made by taking 75 per cent of the terminal rates, is founded upon facts which do not exist and is constructed upon a theory which can not be approved by the Commission.
2. Present rates charged by the Great Northern and the Northern Pacific upon the commodities specified in the supplemental complaint from the defined territories mentioned to Spokane are unreasonable, and just and reasonable rates for the future should not exceed those which are set forth in Schedule A, attached to this report.
3. In fixing these rates the Commission has proceeded upon the view that, under the decisions of the Supreme Court of the United States, it could not use the rate to Seattle as a standard by which to measure that to Spokane. If this were otherwise, if the Commission were free to take into account all the competitive conditions existing both east and west and determine what, in the light of all these conditions, would be a just and reasonable relation between the rates of Seattle and Spokane, a somewhat different question would be presented.
4. Joint through rates, both class and commodity, should be established from defined territories east of Chicago to Spokane. The rates named in Schedule A are just and reasonable and should not be exceeded for the future.
5. In some instances joint rates upon the commodities dealt with in Schedule A are now in existence; in those cases, if they exceed the rates specified, they are unreasonable, and the carriers maintaining them are required to establish those specified in the schedule in lieu of their rates now in effect.
6. Where joint through rates do not now exist from points east of Chicago upon certain lines to Spokane, the Commission finds that there is no reasonable and satisfactory through route and that such through routes and joint rates ought to be established.
7. Both class and commodity rates should be slightly lower from Mississippi River points to Spokane than from Chicago points, as is indicated by the rates named in Schedule A.
8. The rates named in Schedule A upon classes and commodities dealt with in the previous opinion, as to arbitraries between St. Paul and Chicago, are reasonable, and the former finding of the Commission in such previous opinion is amended accordingly.
9. The class and commodity rates specified in Schedule A found just and reasonable rates to be applied from the defined territories therein named to Baker City, La Grande, and Pendleton, Oreg., and Walla Walla, Wash., and the present rates maintained to those points, in so far as they exceed the rates specified in Schedule A, are unjust and unreasonable.

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10. The rates which the Commission has established herein to Spokane should be applied to those points at which the Spokane rates have been maintained in the past.
11. In order to proceed with great caution in this matter the Commission has determined before making a final order to learn the result of an actual test. "Therefore carriers will be required for the months of July, August, and September to keep a detailed account showing the revenues which accrue upon business actually handled under present rates and the revenues which would have accrued had the rates here prescribed been in effect.

Fred. Pugh, E. O. Connor, H. M. Stephens, and Brooks Adams for complainants.

Hale Holden, Pierce Butler, O. M. Dawes, and W. R. Begg for Great Northern Railway Company and Chicago, Burlington & Quincy Railroad Company.

C. W. Bunn and Charles Donnelly for Northern Pacific Railway Company.

How, Butler & Mitchell for Great Northern Railway Company.

Charles Donnelly and E. J. Cannon for Northern Pacific Railway Company and New York, New Haven & Hartford Railroad Company.

F. C. Dillard and W. W. Cotton for Union Pacific Railroad Company.

Herbert D. Carter for New York Central lines.

George D. Ogden for Pennsylvania Railroad Company.

Joseph N. Teal and Seth Mann for Portland Chamber of Commerce and Pacific Coast Jobbers and Manufacturers Association, interveners.

H. C. Barlow for Chicago Association of Commerce, intervener.

H. M. Stephens for Walla Walla Commercial Club, intervener.

Nathan Bijur for Merchants' Association of New York, Boston Chamber of Commerce, Philadelphia Chamber of Commerce, Springfield (Mass.) Chamber of Commerce, Hampden County (Mass.) Traffic Association, Marlboro (Mass.) Board of Trade, Worcester (Mass.) Board of Trade, Chamber of Commerce of the State of New York, Richmond (Va.) Chamber of Commerce, and Petersburg (Va.) Chamber of Commerce, interveners.

Turner Oliver for La Grande (Oreg.) Commercial Club; the City of La Grande, Oreg.; and County of Union, Oreg., interveners.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Commissioner:

In disposing of the original *Spokane case*, 15 I. C. C. Rep., 376, the Commission held that the class rates from St. Paul and Chicago to Spokane were unreasonably high, and named certain class rates which would, in its opinion, be reasonable. Some 34 commodities were specifically referred to in the complaint and in the evidence.

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It was found that the rates in effect upon these commodities from St. Paul and Chicago to Spokane were unreasonable, and reasonable rates were named. An order was issued effective May 1, 1909, establishing the class rates and the commodity rates found to be reasonable.

Upon the promulgation of this opinion and order the Union Pacific lines filed a petition asking to be relieved from the effect of the order. It was alleged in their behalf that the distance from both St. Paul and Chicago to Spokane via those lines was much greater than via the Northern Pacific and Great Northern; that even though the rates established were reasonable via the shorter route, they were unreasonable via the longer, circuitous route; that while these lines had in the past, under the higher rates, elected to compete at Spokane, they did not desire to do so under the rates established by the Commission; wherefore they asked to be relieved from the obligation of the Commission's order.

For reasons stated in its memorandum of May 3, 1909, 16 I. C. C. Rep., 179, the prayer of this petition was granted, in so far as to relieve the Union Pacific lines and the Chicago & North Western line temporarily from the effect of the order.

This order only dealt with class rates and with some 34 commodity rates. The movement of traffic from the east to Spokane under class rates is comparatively small, and there remained a great mass of commodity rates which were alleged to be unreasonably high and which evidently must be reduced if the Commission were to carry out its idea as expressed in the reduction of those commodity rates before it. While we dealt only with rates to Spokane, it was understood that these reductions to that locality would of necessity involve a widespread readjustment of rates to all intermountain territory from the Canadian line to Mexico. The opinion suggested that possibly some comprehensive scheme might be devised by the carriers which could be applied not only to Spokane, but in other territory. The defendants asked for more time for the purpose of working out a plan of this character, which was granted, and in May, 1909, the Great Northern and Northern Pacific presented to us a schedule of commodity rates from various eastern points of origin to Spokane, asking that they be allowed to establish the rates specified in that schedule, and that this proceeding be thereupon dismissed.

It was a condition of the postponement of our order from May 1, allowing further time for the presentation of this scheme of commodity rates, that the class rates found to be reasonable by the Commission should be at once put into effect by the carriers, and schedules were accordingly filed which are still in force. To these tariffs the Union Pacific lines became voluntary parties, both from St. Paul and from Chicago, and they have also established the St. Paul rates from Omaha and other Missouri River points to Spokane.

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The proposed commodity tariff presented as above by the defendants to the Commission was met by vigorous protest from the complainants and also from the interveners representing Seattle, Tacoma, Portland, and San Francisco.

On June 9, 1909, the city of Spokane filed its supplemental complaint, putting in issue, among other matters, the balance of the commodity schedules from eastern destinations to Spokane, and asking that joint rates be named from destinations east of Chicago to Spokane both upon class and commodity rates.

The city of Pendleton, Oreg.; the Chamber of Commerce, Baker City, Oreg.; the Commercial Club of La Grande, Oreg.; the Commercial Club of Walla Walla, Wash.; and the Merchants Association of New York have filed intervening petitions.

A hearing was had in Washington in June, 1909, as a result of which it was determined to hold a further hearing at Spokane to give opportunity for the presentation of testimony by all parties, including the interveners. The case was accordingly further heard at Spokane the last of September and the first of October, 1909, and was on October 4 orally argued. Since then all the parties, including the interveners, have filed elaborate briefs.

Four questions are presented for decision upon the present record:

1. Shall the scheme of rates proposed by the Great Northern and the Northern Pacific be approved by the Commission?
2. If not, what rates shall be established to Spokane from St. Paul and Chicago?
3. Shall rates be established from territory east of Chicago?
4. Shall the Spokane rates be extended to other points in that vicinity; and if not, what rates shall be established to the localities which have intervened?

I.

To determine whether the scheme of the defendants shall be approved we must first understand clearly what that scheme is.

It was claimed by the defendants and found in the original decision that rates from eastern points of origin to Pacific coast terminals were induced by water competition. It appeared, however, from the testimony, and was stated in the opinion, that while these terminal rates are influenced by, they did not fully meet, this competition by sea, since large quantities of traffic still move to all Pacific coast terminals by the various water and rail-and-water routes from the Atlantic seaboard. The defendants, in constructing their plan, started out with the assumption that rates 25 per cent lower than the present rates would be required to fully meet this sea competition.

Traffic from the Atlantic seaboard to an interior destination, like Spokane, may move by water to a Pacific coast terminal, like Seattle,
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and from that terminal by rail, the through rate being the sum of the water rate to Seattle and the rail rate from Seattle. A rate from the eastern point of origin to Spokane, which fully met water competition at Spokane, would be constructed, therefore, by taking the water competitive rate to the terminal and adding to it the full local from the terminal to the interior point.

It was claimed by the coast cities in this proceeding, and is being insisted upon by them in other proceedings, that the present rates eastbound from these terminal points are unreasonable, and the carriers apparently concede that these rates must be reduced. For the purpose of constructing the proposed rates to Spokane, not the present local, but a rate $16\frac{1}{2}$ per cent less than the local, was used. Spokane rates are therefore constructed by taking 75 per cent of the terminal rate from eastern territory and adding thereto a rate which is $16\frac{1}{2}$ per cent less than the present local rate from Seattle to Spokane.

The rate thus created is applied from Chicago. From the Mississippi River the same rate is established, but from the Missouri River the rate is about 10 per cent less. The theory of the defendants seems to be that ordinarily the cost of producing commodities sold in Spokane is somewhat greater upon the Missouri River than in the vicinity of Chicago and St. Louis, and that therefore a somewhat less freight rate should be made to equalize the cost of laying down the article in Spokane. In cases where this is not true or where the reverse is true, the rate from the Missouri River is the same as from Chicago and the Mississippi River.

Rates from Colorado common points to Spokane are in about one-half the instances the same as from the Missouri River; in the balance about 10 per cent less.

Ordinarily, rates from points of origin east of Chicago are constructed by adding to the Chicago rate the full local up to Chicago. This is true in all cases where the commodity is produced in considerable quantities in Chicago territory or to the west. Where the article is produced exclusively upon the Atlantic seaboard or at some point east of Chicago, the Chicago rate is constructed by subtracting from the rate obtained as above the rate from the point of origin up to Chicago. This, in effect, applies the Chicago rate to the point of origin.

The idea seems to be that so long as Spokane can purchase either at Chicago or at some more easterly point it shall purchase at Chicago, but that if it can not buy in Chicago territory then it shall be given a rate which will enable it to buy in the same market with its competitor at Seattle or Portland.

The complainants object to this proposed scheme of rates upon two principal grounds:

It is said that the proposed rates are not as favorable to the jobbers of Spokane, in comparison with the rates enjoyed by their competitors at the coast cities, as the present rates. It will be found upon examination that this is not, on the whole, true. Aside from dry goods, carpets, and drugs and medicines, the proposed rates give to the Spokane jobber substantially the same advantages in comparison with rates from Seattle as does the present adjustment. There are some instances where the Spokane wholesaler can go somewhat farther and other instances where he can go a somewhat less distance upon an even rate than at the present time, but upon the whole the result of adopting the proposed schedule of rates would not be greatly to the disadvantage of the Spokane jobber except in case of two or three commodities.

Even if the contention of the complainants in this respect was true, it would not be conclusive against the approval of the proposed schedule. It must be remembered that the present rates are the result of a deliberate attempt to carve out a certain territory in which the jobber of Spokane should have the advantage in rates over his competitor upon the coast or elsewhere. While it is of great importance to Spokane as a commercial center that it shall control the wholesaling business into surrounding territory, and while there is great force in its claim that no schedule of rates can be right which permits merchandise to be hauled from the east over the Cascade Mountains to Seattle and back again to the consumer upon the east of that mountain range, and while the complainants are justified in urging upon the Commission the discrimination which may arise against the wholesaler in that locality, still the right of Spokane to control this territory should depend upon a reasonable adjustment of rates which is open to Spokane and to all corresponding territory, and not upon a special arrangement peculiar to that locality. We may and should inquire to what extent the Spokane wholesaler can compete in adjacent territory with his rival upon the Pacific coast, but we should not disapprove this schedule simply because it is less favorable to the wholesaler at Spokane in some respects than the present rates.

The second objection of the complainant is that the proposed rates are no substantial reduction from the present rates. This is hardly true. The proposed rates afford a very substantial reduction from the rates now in effect. In many cases they are less than rates would be if established upon the basis adopted by the Commission.

The most serious objections to this scheme from our point of view are not those urged by the complainants and interveners.

The rate constructed as above detailed is applied from Chicago to Spokane. Why should this be applied from Chicago rather than from New York or from the Missouri River? The rate is constructed

by taking 75 per cent of the terminal rate, and this terminal rate applies to the coast from all territory east of the Missouri River. It is said that this blanket rate from eastern territory to Seattle has been forced by water competition. Now, if 75 per cent of this rate is necessary to fully meet water competition and if the theory of this scheme of rate making is to meet water competition at Spokane, why should not the rate which results from the addition of the local rate to Spokane be made to apply from all eastern territory? In other words, why does not water competition require the same blanket rate from eastern territory to Spokane which it produces at Seattle?

The defendants were asked this question and answered in substance that logically this might be true, but that in meeting this water competition the defendants were at liberty to meet it in whatever way and at whatever point and to whatever extent they saw fit.

This can not be admitted. It is not clear that these carriers in meeting competition, can consult their own interests alone, without reference to the interest and desire of the communities which they serve. But however this might be with the defendants, certainly this Commission can not approve a schedule of rates constructed upon that theory.

When the commodity originates both at Chicago and at New York, so that the Spokane buyer can purchase in either market, he is compelled to pay the local rate from New York to Chicago, which means that he must ultimately buy in Chicago rather than in New York. If the commodity can be purchased only in New York, then the rate from Chicago is made lower than it otherwise would be, for the purpose of permitting the Spokane merchant to purchase upon the Atlantic seaboard. The manifest purpose of this is to compel Spokane to buy in the middle west, that being in the interest of the defendant carriers.

While general commercial conditions should be considered and while these defendants might properly decline to apply the same rate to the longer haul from New York which they apply to the shorter haul from Chicago, it may be doubted whether they should be permitted to construct a tariff for the express purpose of compelling the manufacture or the merchandising of a given commodity at Chicago or upon the Missouri River or at the Atlantic seaboard. Some system of rates which on the whole seems just and reasonable should be established, and these different communities should be permitted to do whatever business they can under that rate system.

When the Commission suggested that the defendants propose some basis for constructing these rates which would be more comprehensive than that used by the Commission, its idea was that such

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scheme should be of a character which would render it applicable to other points than Spokane. We have before us at the present time complaints from many localities in this intermountain territory, and these complaints must in some way or other be disposed of. The scheme proposed by the defendants for Spokane is apparently of no assistance at any other point.

For example, what is to be done with the rates between Spokane and the coast terminals? How far west of Spokane is the combination to be made upon 75 per cent of the coast rate? At the present time most of these rates west of Spokane are made by the combination upon the full terminal rate plus the full local rate back. If Spokane is entitled to a combination upon 75 per cent of the terminal rate, why is not every interior point west of Spokane entitled to the same basis of combination?

What, again, is to be done with rates east of Spokane? Upon the theory of the defendants these rates might well be higher than those to Spokane, since the local rate from the coast increases as the distance from the coast grows greater. But the Commission is asked to establish rates to Spokane which are inherently reasonable, and, manifestly, we could not permit the existence of a higher rate at an intermediate point. Missoula has already inquired what its rates are to be, and this Commission must answer that question.

The scheme of the defendants assumes that water competition exists at Spokane which must be met. The testimony in this record fails to disclose the existence of such competition to any appreciable extent. While a reduction in the rates from the coast to Spokane would tend to stimulate the movement of traffic through Seattle and Tacoma, still it does not appear probable that such a movement could ever assume considerable proportions, even with the present west-bound rates to Spokane.

This scheme of the defendants therefore is founded upon facts which do not exist, is constructed upon a theory which can not be approved, and is of no assistance in solving the general problem before the Commission. While we recognize that these defendants have made an honest effort to meet the situation, by the construction of these schedules, we are constrained to withhold our approval.

II.

If the rates suggested by the defendants are not to be approved, what rates shall be established by the Commission?

The original complaint attacked the class rates from St. Paul and Chicago to Spokane, and in our decision we held that the existing rates were unreasonable and fixed certain lower rates for the future. The complaint also named some 34 different commodity rates which were alleged to be excessive. We held that these rates were unreason-

able and established lower rates as substitutes. The complaint contained a statement that all rates from St. Paul and Chicago to Spokane were unreasonable, but we held that a general allegation of this kind could not lay the foundation for an order reducing those rates; that there must be a specific attack upon each specific rate, which would put the defendant upon notice of the exact thing complained of. We therefore declined to express any opinion or to make any order as to the great mass of commodity rates.

The complainant has now filed a supplemental petition in which it attacks in detail 580 commodity rates. In the hearing at Spokane each one of these items was taken up by itself and particularly investigated. The Commission is therefore in a position to determine what are reasonable rates upon these commodities.

Both parties are highly dissatisfied with the few commodity rates which were fixed by the Commission. The complainants renew, with great earnestness, their claim that no rate should be permitted at Spokane which exceeds the rate to Seattle. We have, however, upon full consideration, held that, under the decisions of the Supreme Court of the United States, the Seattle rate can not be made the measure of the Spokane rate; that our only power is to establish rates to Spokane which are just and reasonable under all the circumstances, and to this ruling we must adhere.

The defendants urge that our decision, carried to its legitimate conclusion upon the whole commodity list, in view of reductions which must elsewhere result, will be disastrous. They further show that since the submission of the original case large expenditures have been made upon their properties, which, of itself, might well call for a reconsideration of the conclusions reached upon the record as it then stood.

In the former hearing the Northern Pacific and the Great Northern companies attempted to show the cost of reproducing their respective properties. This testimony was given as of the spring of 1907. The Northern Pacific now shows that since then it has expended approximately \$93,000,000, while the Great Northern shows an expenditure of approximately \$75,000,000. These sums would in each case equal approximately 25 per cent of the entire cost of reproduction as found by the Commission, and would, if not accompanied by increased earnings, perhaps justify the claim to a greater return.

An examination of the nature of these expenditures does not, however, lead to the conclusion that they can have any legitimate bearing upon the correctness of our former decision. While some small part of the outlay is upon the property, the cost of reproducing which was given in the former case, the great bulk of the expenditure is not.

For example, the Northern Pacific shows that it has expended since 1907, \$15,000,000 for new equipment. The former testimony showed that the equipment of this company was sufficient for the performance of the service from which its revenues had resulted. Large sums had been charged against the depreciation of that equipment. It was carried into the estimate of value at substantially the figures put upon it by the engineers of the Northern Pacific itself. If that company has since then expended this large amount in the acquiring of new equipment, it must have been in contemplation of new business which will yield additional revenues at the former rates.

The same remark applies to the large expenditures shown in the construction of branch lines. If the branch lines of a railroad are judiciously planned and constructed, they should certainly be taken into account in determining the value of the railway, for although they may not earn a large return upon the cost, considered as an independent proposition, they do add to the traffic and the earning power of the entire system. But here again it must be assumed that these new branches which have been constructed are good investments, otherwise they would not have been built, and that they will add to the earnings of the property in proportion as they have added to its cost. No increase in rates should be called for on this account.

The Northern Pacific and Great Northern have each advanced in the construction of the Spokane, Portland & Seattle railroad some \$25,000,000, which is a part of the total expenditure above named.

This railroad has been constructed jointly by these two companies. While it does not definitely appear, it is our understanding that it is to be operated as an independent proposition. It has just been opened for business, and up to the present time its earnings are small. This property, like the new equipment of the Northern Pacific and its branch lines, ought to be worth what it has cost and ought to earn a return upon that amount. Certainly the patrons of the Northern Pacific and the Great Northern should not be taxed on account of the construction of this railroad.

A word of explanation should perhaps be given as to the use which has been made or should be made by the Commission, in the fixing of these rates, of this testimony as to the value of the properties involved.

The defendants assumed in the argument of this case at Spokane and again in the argument of the *Reno* and *Salt Lake* cases, 19 I. C. C. Rep., 218 and 238, that the Commission had reduced the rates to Spokane because it found that the revenues of the carriers were excessive and for the purpose of reducing those revenues. This is an entire misconception both of the purpose and of the effect of our inquiry into the financial operations of these companies.

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The complaint was that the rates of the defendants to Spokane were unlawful, first, because they were higher than corresponding rates to more distant points, and, second, because they were excessive in and of themselves. There is no better way to convey an accurate idea of the exact question presented than by giving instances of actual shipments from the expense bills, great numbers of which were introduced by the complainants upon the hearing.

On a carload of drugs shipped from New York to Spokane, carriers from New York to Chicago, 900 miles, received \$139.53; from Chicago to St. Paul, 400 miles, \$59.69; and from St. Paul to Spokane, 1,500 miles, \$543.48; a total of \$742.70. Had this carload been moved through Spokane and over the Cascade Mountains to Seattle, 375 miles farther, the total charges would have been \$556.12, and the receipts of the defendants for the haul of 1,875 miles from St. Paul to Seattle, \$356.90.

On a carload of glassware from Pittsburg to Spokane the receipts were, from Pittsburg to Chicago, 500 miles, \$70.85; from Chicago to St. Paul, \$45.92; from St. Paul to Spokane, \$532.67; total \$649.44. Had the shipment moved to Seattle the total charges would have been \$393.60, of which the lines from St. Paul would have received \$276.83.

On a carload of tinware from Chicago to Spokane, lines up to St. Paul received \$55.69; from St. Paul, \$542.61; total \$598.30. Had the shipment moved to Seattle the total charges would have been \$376.04, and the division of the lines west of St. Paul, \$320.35.

A carload of books from Chicago yielded to carriers from Chicago to St. Paul \$84.85; from St. Paul to Spokane, \$855.65; total, \$940.50; while the same shipment to the coast would have totaled \$585.20, yielding to the carriers west of St. Paul \$500.35.

It was not so much the fact that the total charge to Spokane exceeded that to Seattle, the more distant point, as the extremely high charge imposed by these defendants for their service from St. Paul to Spokane, which required explanation.

The defendants undertook to justify this condition of things upon the plea that their coast rates were controlled by water competition; that their Spokane rates were reasonable, and that any reduction at Spokane would deprive them of a fair return upon the value of their property.

The attack of the complainants was not upon a single rate nor upon a comparatively small number of rates, but upon the entire schedule from the east to Spokane. Conditions at Spokane were like those at numerous other points, and whatever rule was applied there must be extended to these other points. All this meant that any considerable reduction of the rates to Spokane must produce a very material effect upon the revenues of the defendants. The defendants earnestly

urged that such reduction would deprive them of their property, in violation of the constitution of the United States.

This issue was made by the defendants; it was a fundamental issue and must be first determined. Before these rates, involving as they do whole schedules, can be reduced, we must decide whether the result will be to deprive the defendants of a fair return upon their property. A considerable part of the discussion necessarily centered around this issue, which was, in that sense, a controlling one. But the purpose of that discussion was not to ascertain whether rates *should* be reduced, but whether they *could* be reduced.

The Commission held that the earnings of the Northern Pacific and the Great Northern for the ten years preceding 1908 might fairly be termed excessive and that reductions in revenues might therefore be made without violating the constitutional rights of those companies. Having determined that question, we did not make reductions in rates to Spokane for the reason that these revenues were excessive and for the purpose of reducing those revenues. Had this been the theory, we must have inquired what part of the excess should be eliminated by reduction of these rates, and whether some portion of it should not be disposed of by a reduction of other rates, as for example, the high rates from the coast to the interior which were under attack. It will be seen by an examination of the report that no attempt was made to consider any question of this kind. The rates to Spokane were held to be unreasonable and other rates were established as reasonable upon entirely different considerations. Without attempting to say whether this Commission might in any case reduce rates for the sole reason that revenues were found excessive, it has not attempted to do so in this case.

The Northern Pacific Company already has either a double track or a double line a considerable portion of the distance between St. Paul and the Pacific coast, and within a comparatively few years the entire system will be provided with a double track or its equivalent. In some respects this railroad has cost more and in some respects less than a similar railroad east of the Missouri River. The cost of operation is somewhat more, and in our opinion the corresponding freight rates may properly be somewhat higher in this territory than east of the Missouri River, but we were unable to see, when our first opinion in this case was promulgated, and we are unable to see now, any excuse for these abnormally high rates between St. Paul and Spokane. What is said of the Northern Pacific applies to the Union Pacific lines leading west from the Missouri River, and to the Great Northern, although the amount of business handled by the latter line is somewhat less than that of the other two.

We have patiently listened to both the complainants and the defendants, and have endeavored to carefully and fairly consider this

whole situation. We are of the opinion that the present rates charged by the Great Northern and the Northern Pacific upon the commodities specified in the supplemental complaint from the defined territories mentioned in that complaint to Spokane are unreasonable, and that just and reasonable rates, which ought not to be exceeded for the future, would be those which are set forth in Schedule A attached to this report.

In fixing these rates we have proceeded upon the view that, under the present decisions of the Supreme Court of the United States, we could not use the rate to Seattle as a standard by which to measure that to Spokane. If this were otherwise, if we were free to take into account all the competitive conditions existing both east and west and to determine what, in the light of all these conditions, would be a just and reasonable relation between the rates of Seattle and Spokane, a somewhat different question would be presented.

III.

The next question is, From what point or points in the east shall we establish rates to Spokane? The supplemental complaint prays for the fixing of joint rates, both class and commodity, from all eastern territory to Spokane. This proposition the defendants resist, insisting that neither commodity nor class rates shall be fixed east of Chicago.

In the Spokane tariffs now in effect the territory upon the Missouri River and east is divided into certain defined groups, known as Missouri River territory, Mississippi River territory, Chicago territory, Detroit territory, Pittsburg territory, and New York territory.

Joint class rates are in effect from Chicago to Spokane, but not from territory east of Chicago. Of the commodity rates to Spokane some apply only from Chicago, but many, perhaps the majority, apply also from territory east of Chicago, sometimes, though not always, from the Atlantic seaboard. This condition of confusion arose out of the attempt to sequester to Spokane its jobbing territory in 1904. If a jobber purchased his supplies in Cleveland, for example, a carload rate would be established from that territory which would enable him to wholesale at Spokane within the prescribed zone as against the Pacific coast. This rate might therefore apply only from Detroit territory and territory west. Some other wholesaler required and obtained a rate from the Atlantic seaboard for the purpose of purchasing his supplies in that market.

As a rule transcontinental commodity rates apply as blanket rates to Pacific coast terminals from all territory upon the Missouri River and east, but to this there are some exceptions. The rate is occasionally lower from the Missouri River and sometimes even from Chicago or from Pittsburg territory than from the Atlantic seaboard, but in no case is it lower from New York than from Chicago or the

Missouri River. In the past class rates governed by the Western Classification have been published from eastern defined territories to Pacific coast terminals upon all the classes, but beginning January 1, 1910, these rates were withdrawn from territory east of Chicago as to all classes except the first four.

At the present time class rates to Spokane from territory east of Chicago are made by combination upon Chicago or St. Paul, the Official Classification governing up to Chicago or St. Paul and the Western Classification beyond. The testimony shows that much difficulty and annoyance arise from inability to determine the rate from the point of origin up to Chicago, owing to different minimums, different requirements as to packing, different mixtures, etc.

We are of the opinion that joint through rates, both class and commodity, should be established from defined territories east of Chicago to Spokane. Schedule A defines certain territories as they are now to be found in the Spokane tariffs and names class rates governed by Western Classification and commodity rates from these territories to Spokane. We are of the opinion that the rates named in that schedule are just and reasonable and should not be exceeded for the future, and that the present rates, in so far as they exceed the rates therein named, are unjust and unreasonable.

As already said, there are no joint class rates from points east of Chicago. In some instances joint rates upon the commodities dealt with in Schedule A are now in existence and in some instances not. In those cases where such rates exist, they are, if they exceed the rates specified, unreasonable, in the opinion of the Commission, and the carriers now maintaining such rates will be required to maintain those specified in the schedule in lieu of their rates now in effect.

The lines east of Chicago parties to this proceeding are the Lake Shore & Michigan Southern, the Pittsburg, Fort Wayne & Chicago, the Pennsylvania Railroad, the New York Central & Hudson River, the Boston & Maine, and the New York, New Haven & Hartford. Where joint through rates do not now exist from points upon these lines to Spokane, we find that there is no reasonable and satisfactory through route, and that such through route and joint rate ought to be established. We further find that the rates specified in Schedule A from these points to Spokane will be reasonable rates to be charged as joint rates applicable over the through routes thus established, and that they ought not to be exceeded for the future.

In the past, transcontinental and Spokane tariffs have both recognized a territorial division known as Mississippi River points and another division known as Chicago points. Commodity rates to Spokane have usually been the same from both these territorial divisions; rates upon the higher classes have usually been somewhat

less from the Mississippi River. In disposing of the original case no inquiry was made as to whether the rates fixed for Chicago should apply at the Mississippi River. Examining this question now in this case and similar cases before us, it seems to us that both class and commodity rates should be slightly lower from Mississippi River points than from Chicago points, as is indicated by the rates named in Schedule A.

In the original case, certain arbitraries were added to the St. Paul-Spokane rate in constructing the rate from Chicago. In further examining this question with a view to establishing class rates from eastern defined territories, we have reached the conclusion that the spread between the St. Paul and Chicago rates was somewhat too great, and class rates have been named in Schedule A which are slightly less than those formerly prescribed. The previous finding of the Commission is amended accordingly.

With respect to commodity rates upon the few commodities dealt with in the original case, the opinion was expressed that the Chicago rate should exceed the St. Paul rate by about 16 per cent. Upon further reflection, we are of the opinion that this difference was somewhat too great. In the past no distinction has ordinarily been made by the carriers themselves between Chicago and the Missouri River in their commodity rates to Spokane, and the difference in the schedule proposed by the defendants did not ordinarily exceed 10 per cent. Our present opinion is that the rates named in Schedule A upon those commodities dealt with in the previous opinion are reasonable, and our former finding is amended accordingly.

IV.

The final question is, To what points shall the rates which we establish to Spokane be extended? Spokane was the only complaining territory in the original suit, but since our decision Baker City, La Grande, and Pendleton, in the state of Oregon, and Walla Walla, in the state of Washington, have filed intervening petitions asking that rates not higher than those established at Spokane be fixed for these localities. The intervening petitions have all been duly filed and served upon the Union Pacific lines and the other defendants, so that we have before us the proper parties and the proper antecedent proceedings for the establishing of rates to these intervening localities.

Baker City, La Grande, and Pendleton are located upon the main line of the Oregon Railroad and Navigation Company, and are distant from Omaha 1,442, 1,494, and 1,568 miles, respectively. Walla Walla is upon a branch of the Oregon Railroad and Navigation Company leading from Pendleton to Spokane and is 47 miles distant from Pendleton.

In the past Spokane rates from St. Paul have applied upon the Great Northern as far west as Avery, 111 miles from Spokane, and upon the Northern Pacific as far west as Kennewick, 149 miles. The Northern Pacific has a branch line to Pendleton and has maintained at Pendleton the Spokane rate from St. Paul. We are of the opinion that the rates which we have established to Spokane should be applied by the Great Northern and Northern Pacific to those points at which the Spokane rate has been maintained in the past.

Rates from St. Paul and from Omaha and other Missouri River points to Spokane have in the past been the same. The Union Pacific lines extend from Pendleton to Spokane, and it has been the policy of those lines to apply to Spokane the same rates from Omaha which the northern lines have made from St. Paul and also to join with its connections in applying from St. Paul itself, through Pendleton, to Spokane, the same rates made by the northern lines from St. Paul to Spokane. In doing this it has made no higher charge at any point between Pendleton and Spokane than to Spokane. The result of all this has been to produce what is commonly known as Spokane-rate territory, extending some 150 miles west of Spokane and covering all the territory between Pendleton and Spokane.

In the past the Union Pacific lines have maintained rates at La Grande and Baker City which were somewhat higher than those to Pendleton from both St. Paul and Omaha. It is difficult to see how the Commission can, with any consistency, allow higher rates at these points from Omaha than are established from St. Paul to Spokane. The distance from St. Paul to Spokane is 1,500 miles; from Omaha to Baker City and La Grande, 1,442 and 1,494 miles, respectively. There is no condition of construction or operation or financial result which would justify the Union Pacific lines in maintaining a higher rate for 1,500 miles from Omaha west toward Portland than is maintained by the Northern Pacific and Great Northern for a corresponding distance west from St. Paul toward Seattle.

We are of the opinion that the class and commodity rates specified in Schedule A would be just and reasonable rates to be applied by the Union Pacific lines and their eastern connections from the defined territories therein named to Baker City, La Grande, and Pendleton in the state of Oregon, and Walla Walla in the state of Washington, and that the present rates maintained to those points, in so far as they exceed the rates specified in Schedule A, are unjust and unreasonable. We shall not require the maintenance of these rates via the Union Pacific lines at Spokane, but no opinion is at this time expressed as to territory between Walla Walla and Spokane.

We make the same findings with respect to the establishment of through routes and joint rates via the Union Pacific lines and their

connections to these destinations which we have already made with respect to the Northern Pacific and the Great Northern to Spokane.

We realize that to establish the rates prescribed by Schedule A, together with those fixed by the Commission in other cognate cases now pending before it, will require an extensive revision of the tariffs of the defendants and will entail a material reduction in their revenues. We have endeavored to approximately ascertain this amount and believe the reduction will not be undue. We desire, however, to proceed in this matter with great caution and have therefore determined before making a final order to learn the result of an actual test. Carriers will be required, for the months of July, August, and September, 1910, or for such other representative months as may be determined upon by the Commission after conference with the carriers, to furnish an accurate and detailed account showing the revenue which accrued upon business actually handled under present rates and the revenue which would have accrued upon the same business had the rates here prescribed been in effect.

This account should be confined to traffic covered by the rates named, but the carriers may, if they elect, indicate what other changes will be required which are not covered by the rates prescribed in this and other cases and may keep separate accounts, showing the loss as applied to actual transactions.

We also realize that in preparing these schedules mistakes of detail must inevitably occur. Both parties may file with the Commission, on or before August 15, 1910, any criticism of these schedules, serving a copy of the same upon counsel for the other side. If upon examination of the objections so filed such course seems necessary, opportunity will be given to the parties during the month of September to present testimony in support of their objections, to the end that by October 1 the case may stand for final disposition.

One reason why we have concluded to defer the making of a definite order until October is that carriers will of necessity require considerable time in preparing to print the necessary schedules to establish these rates. They should not wait until the making of an order, but should at once put themselves in readiness to file such rates not later than November 1.

The supplemental complaint attacks eastbound rates on hides and sheep pelts from Spokane to Mississippi River and Missouri River points. The Commission has before it in several other cases rates upon these commodities from various localities in this intermountain country. No opinion will be expressed at this time upon those rates, but they will be reserved for future consideration and disposition.

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SCHEDULE A.

SHOWING CLASS AND COMMODITY RATES FROM EASTERN DEFINED TERRITORIES TO SPOKANE, WASH.

If the class rate is lower than the corresponding commodity rate, such lower rate should be used.

TERRITORIAL DESCRIPTION OF EASTERN DEFINED TERRITORIES USED IN THIS SCHEDULE IN NAMING RATES TO SPOKANE, WASH.

The several territories are designated, as follows:

Territory No. 1: Missouri River and common points, known as Missouri River territory.

Territory No. 2: Mississippi River and common points, known as Mississippi River territory.

Territory No. 3: Chicago and common points, known as Chicago territory.

Territory No. 4: Cincinnati-Detroit and common points, known as Detroit territory.

Territory No. 5: Pittsburg-Buffalo and common points, known as Pittsburg territory.

Territory No. 6: New York-Boston and common points, known as New York territory.

The foregoing territorial groups are described in detail in Northern Pacific Railway Company's Joint Freight Tariff No. 23500, I. C. C. No. 3295, which description is referred to and need not at this time be reprinted here.

Statement of proposed class rates from eastern defined territories to Spokane, Wash., governed by Western Classification.

[Rates in cents per 100 pounds.]

From—	Classes.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Missouri River.....	\$2.50	\$2.17	\$1.83	\$1.58	\$1.33	\$1.33	\$1.04	\$0.83	\$0.79	\$0.71
Mississippi River.....	2.80	2.43	2.03	1.71	1.43	1.45	1.14	.91	.86	.78
Chicago.....	2.80	2.51	2.09	1.75	1.47	1.50	1.18	.94	.89	.80
Cincinnati-Detroit.....	3.05	2.63	2.19	1.81	1.52	1.56	1.22	.98	.92	.83
Pittsburg.....	3.20	2.76	2.25	1.87	1.57	1.62	1.28	1.03	.96	.86
New York.....	3.50	3.01	2.49	2.00	1.67	1.75	1.38	1.11	1.02	.93

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories.

[Rates in cents per 100 pounds, unless otherwise specified, subject to Western Classification.]

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise spec- ified.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
A.												
Advertising matter (not to exceed 500 pounds), may be shipped with carloads of articles adver- tised, at the carload rate of ar- ticle shipped.												
Agricultural implements:												
Articles taking Class "A" rates, specified in Western Classification No. 46 (I. C. C. No. 4 of F. O. Becker, agent), supplements thereto and re- issues thereof, under head of "Agricultural implements" (not including hand imple- ments, farm wagons, trucks, or gasoline engines), also under head of "Agricultural implements, parts of," straight or mixed carloads, minimum carload weight 24,000 pounds.....		118		130		133		139		148		159
Feed and ensilage cutters, in- cluding horsepower, car- riers, blowers, or elevators for same, and smut ma- chines, fanning mills, or grain cleaners, and extra parts for same, minimum carload weight 24,000 pounds.....		125		138		141		148		156		169
Harrow teeth, minimum car- load weight 40,000 pounds....	120	70	127	77	129	79	133	83	139	89	145	95
Agricultural implements (ex- cept hand), windmills and articles classified as vehicles in Western Classification No. 46 (I. C. C. No. 4 of F. O. Becker, agent), supplements thereto and reissues thereof (not including baby car- riages or automobiles), straight or mixed carload, minimum weight 20,000 pounds.....		145		160		163		171		181		196
Hand implements, viz: Forks, barley (wooden): forks, hay or manure; forks, spading; hoes; potato hooks; rakes (wooden or iron); scythes and snaths, in packages, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
Hay rake teeth, minimum car- load weight 30,000 pounds....		95		105		107		112		119		128
Plow beams, iron or steel, min- imum carload weight 24,000 pounds.....	145	85	154	94	156	96	160	100	166	106	175	115
Plow points, shares, lays, and wings or mold boards, also plow and harrow disks, cul- tivator shovels, and road scraper blades, iron or steel, minimum carload weight 24,000 pounds.....	150	100	160	110	163	113	168	118	175	125	185	135
Plows and extra parts, corn planters and extra parts, harrows, disk harrows, seed- ers, attachments extra parts, cultivators extra parts, com- bination hand cultivators and seed drills, minimum carload weight 24,000 pounds.....		115		127		129		136		144		155

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Agricultural implements—Cont'd.												
Draper sticks.....	100	100	170	110	173	113	173	118	185	125	195	135
Seed drills, including beet drills and extra parts, mini- mum carload weight 24,000 pounds.....		115		127		129		136		144		155
Shovels, spades, and scoops, in packages, minimum car- load weight 24,000 pounds...	175	* 135	189	149	192	152	199	159	209	169	222	182
Stump pullers, minimum car- load weight 24,000 pounds.....		115		127		129		136		144		155
Wheels, iron, for agricultural implements, minimum car- load weight 24,000 pounds.....		125		138		141		148		156		169
Arsenate of lead, in packages, mini- mum carload weight 40,000 pounds.....	190	85	199	94	201	96	205	100	211	106	220	115
Asbestos, n. o. s., asbestos roofing slate, asbestos building paper, and felt.....												
Asbestos, magnesite, cork, hair felt, and mineral wool boiler and pipe covering, and cork insula- tion used in the construction of cold-storage plants and simi- lar material for same purposes, in bundles, bags, crates, or cases, minimum carload weight 24,000 pounds, and cement, roofing paint or coating.....	150	100	160	110	163	113	168	118	175	125	185	135
Asphalt paper conduit.....	135	83	143	91	145	93	150	98	156	104	165	112
B.												
Babbitt metal, minimum carload weight 40,000 pounds.....	180	100	160	110	163	113	168	118	175	125	185	135
Bags and bagging, burisap, gunny, bump, or jute, not colored arti- ficially, nor figured, painted, or printed, nor backed with paper or sizing, compressed in bales...	125	85	134	94	136	96	140	100	146	106	155	115
Bags, cotton, in bales or trusses...	175	125	188	138	191	141	198	148	206	156	219	169
Bags, sugar (burisap, cotton lined), in packages.....	140	90	149	99	151	101	156	106	163	113	172	122
Baking powders and baking pow- der compound, boxed.....	170	120	182	132	185	135	192	142	200	150	212	162
Balsam, fr. (same as Drugs, n. o. s.)												
Bananas and coconuts, prepaid or guaranteed, charges to be computed on basis of railroad weight, as ascertained at point of shipment, minimum carload weight 20,000 pounds (see Note 2).....		125		138		141		148		156		169
NOTE 1.—With one or more cars of bananas, one man in charge of same will be passed in both directions; return trip must be made within seven days after arrival at desti- nation.												
NOTE 2.—Minimum weight on coconuts in straight car- loads will be 25,000 pounds.												
Barytes, minimum carload weight 60,000 pounds.....	125	50	130	55	131	56	134	59	138	63	143	66
Bath tubs, water-closet bowls, and cisterns, urinals, washbowls (in- cluding stands, knocked down), and stationary washtubs, cast iron or seamless steel, plain, painted, galvanized, granite lined, or porcelain lined, mini- mum carload weight 24,000 pounds.....		160		176		180		189		200		216

* See Opinion 828.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Bathtubs, cast-iron, plain, painted, galvanized, granite lined, or porcelain lined, minimum carload weight 24,000 pounds.....		150		165		169		177		188		203
Beans and peas, dried, split, or whole, in sacks or barrels, minimum carload weight 40,000 pounds.....	125	75	133	83	134	84	139	89	144	94	151	101
Belting, leather.....	175	120	187	132	190	135	197	142	205	150	217	162
Belting, rubber or cotton.....	175	*120	187	132	190	135	197	142	205	150	217	162
Bicycles (complete or stripped, with or without the stripped parts), boxed or crated, minimum carload weight 10,000 pounds....	360	*250	385	275	402	*292	405	295	423	313	448	338
Billiard tables (including toy billiard tables), knocked down, slates or marbles, cues, cue racks, ball racks, composition pool or billiard balls, composition shake balls (small balls used in bottles), shake bottles, pin pool boards, billiard marker buttons, billiard bridges, billiard cue tips, billiard chalk, and billiard table covers (rubber), minimum carload weight 24,000 pounds.....	200	145	215	160	218	163	226	171	236	181	251	196
Bitters, in glass, packed in wood, minimum carload weight 24,000 pounds.....	200	150	215	165	219	169	227	177	238	188	253	203
Blackboards, wood or composition, in racks or boxes, minimum carload weight 24,000 pounds....	150	100	160	110	163	113	168	118	175	125	185	135
Blackboards, slate, in racks or boxes.....	140	100	150	110	153	113	158	118	165	125	175	135
Blowers (hand), crated, drills (hand), boxed or crated, and portable forges (hand), minimum carload weight 24,000 pounds.....	200	150	215	165	219	169	227	177	238	188	253	203
Books, blank, including school composition books, blank books, and tablets for school purposes in paper covers, boxed.....	175	*125	188	138	191	141	198	148	206	156	219	169
Books, scrap and stub file, boxed.....												
Books, n. o. s., boxed.....	200	*140	214	154	218	158	225	165	235	175	249	189
Books and shoes, any quantity.....		200		220		225		236		250		270
Bottles, glass, n. o. s.; carboys, flasks, glass, common, in boxes, casks, or crates, and demijohns..												
Bottles, wine or beer, and whiskey or brandy bottles of similar shape, common flint, green, black, or amber; common soda-water bottles (not siphon); in boxes or crates.....												
Jars and glasses, fruit or jelly (not including museum jar), and tops and top fastenings (value of jelly glasses not to exceed 25 cents per dozen), in boxes, casks or crates.		75		83		84		89		94		101
NOTE.—Rates named above will apply also on glass fruit jars when forwarded in fiber-board packages, constructed of three-ply or more, glued, solid fiber-board not less than 0.075 inch in thickness, or in water-proofed double-faced corrugated fiber-board packages (facings to be fiber-board), gross weight of package not exceeding 25 pounds; 1 dozen jars in each package, jars to be separated by double-faced corrugated strawboard.												

* See Opinion 222.

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Bottles, wine or beer, and whisky or brandy bottles of similar shape, common flint, green, black or amber (not including druggists' prescription bottles and bottles of similar shape, or flasks, any style finish); common soda-water bottles (not siphon); in bulk or in boxes, casks, or crates.....		75		83		84		89		94		101
Bottles, siphon, confectionery and tobacco, and druggists' and mu- seum bottles or jars, of capacity 1 gallon or less, in boxes or casks, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	196	148	206	156	219	160
Bottles or jars, of more than 1 gal- lon and not exceeding 5 gallons capacity, in boxes, barrels, or crates, minimum carload weight 24,000 pounds.....	190	125	203	138	206	141	213	148	221	156	234	160
Boxes, paper, pasteboard, or fiber board, minimum carload weight 24,000 pounds.....	180	125	193	138	196	141	203	148	211	156	224	160
Boxes, paper, or pasteboard (in- cluding paraffined pasteboard boxes), knocked down flat, also folding egg carriers (folded flat), and egg trays (nested), in boxes, crates, or bundles.....	180	125	193	138	196	141	203	148	211	156	224	160
Brass goods, not silver plated:												
Butts, bolts, castings, flange-cou- plings, pipe bends and traps, pipe connections (n. o. s.), hinges, moldings, nails, riv- ets, tacks, stair threads, blanks, screws, corners for picture frames, and door hills, boxed.....	200	150	215	165	219	169	227	177	238	188	253	203
Brass ingots.....	185	125	198	138	201	141	206	148	216	156	226	160
Brass shells and canopies, for gas and electric light fix- tures, boxed.....	200	150	215	165	219	169	227	177	238	188	253	203
Pipe, tubes and flues (copper or brass), n. o. s., including iron tubing with copper or brass covering.....	185	135	199	149	202	152	209	159	219	169	232	182
Plate and sheet, n. o. s.....	185	135	199	149	202	152	209	159	219	169	232	182
Plate and sheet, completely boxed.....	175	125	188	138	191	141	198	148	206	156	219	160
Rods (including iron rods, brass-covered), completely boxed.....	175	125	188	138	191	141	198	148	206	156	219	160
Valves and pipe connections (n. o. s.), boxed.....	200	150	215	165	219	169	227	177	238	188	253	203
Wire cloth and netting, boxed.....	200	150	215	165	219	169	227	177	238	188	253	203
Brick (clay products), as follows:												
Common, paving or pressed, minimum carload weight 50,000 pounds.....												
Ornamental figured, mini- mum carload weight 50,000 pounds.....	100	50	105	55	106	56	109	59	113	63	118	66
Shaped, invoice value not ex- ceeding \$5 per ton, mini- mum carload weight 50,000 pounds.....												
Enameled, minimum carload weight 40,000 pounds.....		65		72		73		77		81		88
Fire brick or fire brick and fire tile of various shapes, and fire clay, in straight or mixed carloads (but not in- cluding tank blocks or retort settings), minimum carload weight 40,000 pounds.....		80		85		86		90		93		98

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Brick (clay products)—Continued.												
Fire clay retorts and retort settings, minimum carload weight 24,000 pounds.....		95		105		107		112		119		128
Retort settings, in straight carloads, without retorts, minimum carload weight 30,000 pounds.....		75		83		84		89		94		101
Tile, hollow (including fire clay, wall coping, chimney pipe, and flue linings); also conduits, underground, for electric wires, minimum carload weight 50,000 pounds.....		80		55		56		59		63		68
Broom corn, minimum carload weight 14,000 pounds.....		125		125		125		148		156		168
Burial cases, metallic, metallic lined, or wooden, minimum car- load weight 24,000 pounds.....		175		193		197		207		219		236
Butchers' blocks and butchers' cutting tables or benches, knocked down.....	125	53	144	91	146	93	150	96	156	104	165	112
Butter, butterine, oleomargarine, eggs, cheese, and dressed poultry (in packages), minimum carload weight 24,000 pounds, subject to storing in transit and concentra- tion in transit privileges as pub- lished in tariffs of individual lines lawfully on file with Inter- state Commerce Commission.....		175		193		197		207		219		236
(Minimum weight on eggs, in straight carloads, will be 20,000 pounds.)												
C.												
Calcium, chloride of, in iron drums, minimum carload weight 40,000 pounds.....		55		61		62		65		70		74
Calcium, carbide of, in tin cans, boxed, jacketed cans, or iron or steel cans or drums.....	175 180	125 100	188 180	138 110	191 163	141 113	196 168	148 118	206 175	156 125	219 185	260 235
Candles and wax tapers, boxed.....												
Cane or rattan stock, in packages, minimum carload weight 24,000 pounds.....	190	130	208	143	206	146	213	153	223	163	236	176
Canned goods, as follows:												
NOTE.—Canned goods in un- covered boxes will be rated same as if packed in crates.												
Fish, clam juice, oysters, clam chowder, fruits (not pre- serves), meats (including potted or devilled), olives, vegetables, beans, peas, cat- sup, kraut, baked macaroni and cheese, soups, breads and puddings, in tin, glass, or earthenware packages hermetically sealed, boxed, minimum carload weight 40,000 pounds.....	140	90	140	99	151	101	156	106	163	113	172	122
Canned corn, pease, and beans, boxed, straight carload min- imum weight 40,000 pounds.....		*90		99		101		106		113		122
Canned fish, cove oysters, canned clam juice, and canned clam chowder, boxed, minimum carload weight 40,000 pounds.....		85		94		96		100		106		115

* See opinion 628.

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Canned goods, as follows—Cont'd. (Canned meats or meats in glass, hermetically sealed (including potted or dev- illed), boxed, straight or mixed carloads, minimum weight 40,000 pounds.....)		85		94		96		100		106		116
Cans, tin (including tin boxes, tin lard cans, tin lard pails, and milk cans), in packages or in bulk, minimum carload weight 20,000 pounds.....)		85		94		96		100		106		116
Carpets, n. o. s., including art car- pet (heavy burlap, stamped with paint similar to oilcloth); rugs (invoice value not exceed- ing \$100 each), and mats, mini- mum carload weight 24,000 pounds.....)	260	* 185	279	204	283	208	293	218	306	231	325	280
Carpet lining, in rolls, or com- pressed in bales, minimum car- load weight 24,000 pounds.....)	185	110	196	121	199	124	206	130	213	138	242	149
Cars, hand or logging, lumber trucks, and dry kiln trucks, mini- mum carload weight 24,000 pounds.....)		150		165		169		177		188		208
Cartridges, etc., boxed: Cartridge shells (metallic or pa- per, for small arms only, primed or not primed, gun wads, percussion caps, gun implements, bullets, and primers.....)												
Cartridges (metallic or paper, for small arms only), loaded, if so marked on outside of packages.....)	175	125	188	138	191	141	198	148	206	156	219	169
Mixed carloads of articles de- scribed in the two preceding paragraphs.....)		150		165		169		177		188		208
Cement, building or paving, in packages, minimum carload weight 40,000 pounds.....)	100	40	104	44	105	45	107	47	110	50	114	54
Cereals and cereal preparations, viz: NOTE.—Shipments of whole grain will be subject to shelling in transit, cleaning in transit, malting in transit, and milling in transit privileges as pub- lished in tariffs in individual lines lawfully on file with In- terstate Commerce Commis- sion. Brewers' meal, brewers' grits, brewers' cerealine, bran, shorts, chopped or cracked corn, corn meal, and hom- iny.....)		55		61		62		65		70		74
Corn (whole), including Kafir corn (not including pop corn), oats, and rye, straight carload minimum weight 50,000 pounds.....)	125	50	130	55	131	56	134	59	138	63	143	68
Flour (wheat, rye, or buck- wheat) and corn meal, mini- mum carload weight 40,000 pounds.....)	125	70	122	77	134	79	138	83	144	89	150	95
Malt (barley), subject to weight at point of shipment..	115	60	121	66	123	68	126	71	130	75	136	81
Pop corn.....)	160	100	160	110	163	113	168	118	175	125	185	135
Wheat and buckwheat, mini- mum carload weight 40,000 pounds.....)	125	70	122	77	134	79	138	83	144	89	150	95

* See opinion 529.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise spec- ified.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Chimneys and lantern globes, glass, in boxes, barrels or crates, also glass lamp chimneys, packed in double-faced corru- gated pasteboard boxes (sub- ject to restrictions as provided in rule 14B of Western Classifi- cation No. 46—I. C. C. No. 4 of F. O. Becker, agent—supple- ments thereto and reissues thereof, minimum carload weight 16,000 pounds.....	200	150	215	165	219	169	227	177	238	188	253	203
Cider and vinegar (not acetic acid), in glass, boxed, or in wood, pre- paid or guaranteed.....	150	85	159	94	161	96	165	100	171	106	180	115
Citron, lemon and orange peel, minimum carload weight 24,000 pounds.....	160	125	173	138	176	141	183	148	191	156	204	169
Clarifiers, liquid phosphate.....	135	95	145	105	147	107	152	112	159	119	168	128
Clothing, viz: Olefin clothing, olefin sus- pender and olefin hats, in boxes or bales, minimum carload weight 24,000 pounds.....	220	160	236	176	240	180	249	189	260	200	276	216
Clay or pitch pigeons, in boxes, casks or crates.....	150	110	161	121	164	124	170	130	178	138	189	149
Clothespins, boxed, minimum car- load weight 24,000 pounds.....	150	100	160	110	163	113	168	118	175	125	185	135
Clothes wringers, and parts there- of (including combination wash bench and clothes wringers), mop wringers, and hand man- gles, boxed or crated.....	175	125	188	138	191	141	198	148	206	156	219	169
Clothing: Merino and cotton knit underwear, cardigan jackets (cotton or woolen), and sweaters cotton or woolen), in bales or cases, cotton, merino, and woolen hosiery, cotton knit rib- bing and cotton knit wristbands, boxed, minimum carload weight 20,000 pounds.....	150	100	160	110	163	113	168	118	175	125	185	135
NOTE.—Follow lot in excess of carload minimum, the car- load rate will apply.												
Coal, minimum carload weight 60,000 pounds.....	40	45	44	50	45	51	47	53	50	56	54	61
Coke.....	175	125	188	138	191	141	198	148	206	156	219	169
Cocoa, cocoa shells, cocoa beans, and chocolate, in boxes or bags.....	150	125	163	138	166	141	173	148	181	156	194	169
Cocoonut, prepared.....	140	75	148	83	149	84	154	89	159	94	166	101
Coffee, green, in sacks.....	160	90	169	99	171	101	176	106	183	113	192	122
Coffee (including cereal coffee), roasted or ground, in boxes, bar- rels or drums.....												
NOTE.—Rates named above will apply also when for- warded in fiber-board pack- ages, constructed of three-ply or more, glued, solid fiber board not less than 0.075 inch in thickness, or in water- proofed double-faced corru- gated fiber-board packages (facings to be fiber board), gross weight of package not exceeding 30 pounds.												
Coffee substitute and chicory, in boxes or bags.....	160	90	169	99	171	101	176	106	183	113	192	122
Compound, boiler, in boxes, bar- rels or casks.....	125	75	133	83	134	84	139	89	144	94	151	101
Compo board and plaster board, in crates or bundles.....	135	85	144	94	146	96	150	100	156	106	165	115

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Composition for roofing, in pack- ages, minimum carload weight 40,000 pounds.....	125	75	133	83	134	84	139	89	144	94	151	101
Compound for electric fireproofing, in casks or sacks.....	125	75	133	83	134	84	139	89	144	94	151	101
Compound for insulating, in pack- ages.....	125	75	133	83	134	84	139	89	144	94	151	101
Conduits, and racks and washers for same, for interior or under- ground use for electric wires, paper, covered with metal or composition and cast-iron boxes or ducts for same.....	175	125	188	138	191	141	198	148	206	156	219	169
Conduit, iron, galvanized, coated, or enameled.....	175	100	185	110	188	113	193	118	200	123	210	135
Copperas or sulphate of iron, in packages, minimum carload weight 40,000 pounds.....	125	40	129	44	130	45	132	47	135	50	139	54
Copper goods not silver plated: Bar and ingot and cast plate.....	175	125	188	138	191	141	198	148	206	156	219	169
Pipes, tubes, and flues (copper). Plate and sheet, n. o. s., com- pletely boxed.....	185	135	199	149	202	152	209	159	219	169	232	182
Rods, completely boxed.....	175	125	188	138	191	141	198	148	206	156	219	169
Cotton waste, machine-compressed in bales, minimum carload weight 24,000 pounds.....	150	110	165	121	169	124	177	130	188	138	203	149
Crackers, matzos and matzos meal, cakes, fruit biscuit, pretzels, toast, and shredded wheat bis- cuit, in boxes or barrels, or in baskets or tubs with tight wooden covers, or in tin cans (leaves), in tin cans with glass fronts (loose or in crates), or in paper cartons, or in pulp board cases, minimum carload weight 24,000 pounds.....	150	150	165	165	169	169	177	177	188	188	203	203
NOTE.—Matzos meal may be shipped in sacks.												
Cranberries, in packages, mini- mum carload weight 24,000 pounds.....	170	160	182	176	185	180	192	189	200	200	212	216
Cream of tartar, boxed.....	170	120	182	132	185	135	192	142	200	150	212	162
Cresote oil or tar oil, in barrels or tin cans, boxed.....	55	55	61	61	62	62	65	65	70	70	74	74
Crockery and queensware. (See Earthenware.)	150	100	165	110	169	113	177	118	188	126	203	135
Crucibles, in packages.....	180	120	192	132	195	135	202	142	210	150	222	162
Currents, dried, in boxes, barrels, casks, or sacks.....	180	120	192	132	195	135	202	142	210	150	222	162
D.												
Dates. (See Fruits.)	160	110	171	121	174	124	180	130	188	138	199	140
Dressing, harness, shoe, or belt, and shoe and furriers' blacking, liquid or paste, in tin cans, boxed or in barrels.....	160	110	171	121	174	124	180	130	188	138	199	140
Dressing, harness, shoe, or belt, and shoe and furriers' blacking, liquid or paste, in glass or stone, boxed or in barrels.....	160	110	171	121	174	124	180	130	188	138	199	140
Dressing, shoe or belt, and shoe and furriers' blacking, liquid or paste, in bulk in barrels.....	160	110	171	121	174	124	180	130	188	138	199	140

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise spec- ified.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Drugs:												
Medicines and chemicals, ni- trate of ammonia, medicinal oils, witch hazel, medicinal and flavoring extracts, and dye stuffs, n. o. s., in pack- ages, minimum carload weight 24,000 pounds (see notes 1 and 2).....	200	*150	215	165	219	169	227	177	236	186	263	263
NOTE 1.—Does not include nitric, muriatic, and sul- phuric acids, phosphorus, opium, nor toilet articles, except tooth washes, tooth paste, and tooth and toilet powders.												
Medicinal and surgical plas- ters, surgical dressings, and absorbent cotton, boxed.....												
Dry goods:												
Any of the following-named articles, made wholly of cot- ton, viz: Calicoes, cambrics, glazed, flat (not including tracing cloth), canton or cot- ton flannels, cottonades, cot- ton corduroy, cotton or shoddy blankets and burlap, duck and shoddy horse blankets, shoddy blanketing, cotton crash, cotton prints, cotton damask (n. o. s., not including upholstering dam- ask), cotton jeans, cotton bunting, cotton dress linings, cotton dress goods of dome- stic manufacture in the origi- nal piece, cotton yarn, buck- ram, cotton shirtings, can- vas (not embroidery), do- mestic checks, stripes and cheviots, domestic ginghams, silesias, ticking, and scrim, cotton sheets and pillow cases.....	175	125	188	138	191	141	198	148	206	156	219	169
Cotton duck and denims.....	160	110	171	121	174	124	190	130	198	138	199	149
Cotton drills, cotton sheeting, and cotton bagging, bleached or unbleached.....	175	125	188	138	191	141	198	148	206	156	219	169
Enameled cloth and table and shelf oilcloth and covers.....	160	110	171	121	174	124	180	130	138	138	199	149
Hollands, bookbinders'. Same as window-shade hollands. Window-shade cloth or hol- lands in the piece, uncut, and undecorated.....	175	125	188	138	191	141	198	148	206	156	219	169
Dyewoods, n. o. s. (including log- wood) in bags, boxes, or barrels..	160	110	171	121	174	124	180	130	188	138	199	149
III.												
Earthenware, stoneware, and crockery, in boxes, barrels, casks, tierces, crates, or hogheads, minimum carload weight 24,000 pounds.....	140	90	149	90	151	101	156	106	163	113	172	122
NOTE 1.—Will not apply on ornaments, plumbers' crock- ery, plumbers' earthenware, and water filters.												

* See Opinion 820 for rates used.
• See Opinion, 829.

Present rate to Seattle is 169 carloads and 146 less than carloads.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Earthenware or stoneware, com- mon brown, in bulk or in pack- ages, minimum carload weight 24,000 pounds.....	140	90	140	90	151	101	156	106	163	113	172	123
NOTE 1.—Will not apply on ornaments, plumbers' earthen- ware, and water filters.												
Earthenware, plumbers' vis: Washbowls, water-closet bowls and urinals, minimum carload weight 24,000 pounds.....	200	140	214	154	218	158	226	166	236	176	240	180
Eggs and cheese (See Buttes.) Egg-case fillers, knocked down, in packages, minimum carload weight 24,000 pounds.....	140	90	140	90	151	101	156	106	163	113	172	123
Storage battery parts (including wet and dry batteries, battery jars, sines, carbons, carbon flour, carbon points, carbon plugs, and vitrified brick) in boxes or barrels	.....	180	.....	166	.....	160	.....	177	.....	188	.....	208
Incandescent lamps, minimum carload weight 16,000 pounds....	300	200	320	220	326	226	336	236	350	250	370	270
Electric street mains and couplings.	176	126	188	138	191	141	198	148	206	156	219	160
Engines, traction, minimum car- load weight 24,000 pounds; also cylinder water wagons or tank wagons in mixed carload with traction engines.....	.....	116	.....	127	.....	120	.....	136	.....	144	.....	156
Extracts, vis, extracts of beef and tomato bouillon.....	300	180	216	166	219	160	227	177	238	188	253	203
Extracts coffee.....	200	180	216	166	219	160	227	177	238	188	253	203
Extracts hemlock bark.....	170	120	182	182	185	185	192	142	200	160	212	162
Extract of root beer, extract of ginger ale, and extract of lemon- ade.....	200	180	216	166	219	160	227	177	238	188	253	203
Oak-bark extract.....	170	120	182	182	185	185	192	142	200	160	212	162
Fence, picket (woven steel) and attachments.....	180	100	180	110	163	113	168	118	176	126	186	136
Fencing, expanded metal.....	180	100	180	110	163	113	168	118	176	126	186	136
F.												
Fiber, indurated.....	176	120	187	132	190	136	197	142	206	160	217	162
Fiber, kittool, bass raffia, cocoa- nut, cotton seed, pine, palmetto, rice, tampico, and wood.....	180	110	161	121	164	124	170	130	178	138	180	140
Fiber pipe.....	.....	100	.....	110	.....	113	.....	118	.....	126	.....	136
Fiber ware, minimum carload weight 16,000 pounds.....	190	136	204	140	207	152	214	160	224	160	237	182
Fireworks, minimum carload weight 20,000 pounds.....	.....	280	.....	276	.....	281	.....	286	.....	313	.....	338
Fish, dried and salted (boxed or in crates or bundles), smoked and pickled.....	180	120	192	132	196	136	202	142	210	160	222	162
Feed, poultry, vis: Ground meat and bone, alfalfa meal, blood meal, clover meal, gluten feed, gluten meal, cut alfalfa, cut clover, grain screenings, millet seed, crushed shells, and char- coal, in packages.....	126	60	131	66	133	68	136	71	140	76	146	81
Feeds, animal; condiments, ani- mal (for use in animal food), and dog biscuits, in packages.....	150	100	160	110	163	113	168	118	176	126	186	136
Feed, baby, including malted milk and milkine.....	260	180	266	186	260	180	277	177	238	188	303	203
Feeds, sanitarium, n. o. s., boxed	200	180	216	166	219	160	227	177	238	188	253	203
Freezers, ice cream (hand or ma- chine), and ice cream freezer tubs, minimum carload weight 24,000 pounds.....	.....	180	.....	166	.....	160	.....	177	.....	188	.....	203

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Fruit or vegetables (including dates and figs) dried, ground, or evaporated (including prunes and raisins), boxed.....	220	125	233	138	236	141	243	148	251	156	264	169
Furniture:												
Bedsteads, wooden (including wooden folding beds), bu- reaus, chiffoniers, small ta- bles (not including exten- sion tables), and washstands, net cost of each piece enu- merated not to exceed the following, viz—												
Bedsteads or folding beds, \$12 each; bureaus, \$18 each; chiffoniers, \$18 each; small tables (not including extension tables) \$4 each; wash- stands, \$8 each; straight or mixed carload mini- mum weight 30,000 pounds.....		125		138		141		148		156		169
Bedsteads or folding beds, \$12 each; bureaus, \$18 each; chiffoniers, \$18 each; small tables (not including extension tables) \$4 each; wash- stands, \$8 each; straight or mixed carload mini- mum weight when in cars under 40 feet in length, outside measure- ment, 14,000 pounds....		125		138		141		148		156		169
Bedsteads (iron), institution beds (iron), plain or with brass trimmings, knocked down, minimum carload weight 30,000 pounds.....		125		138		141		148		156		169
Bedsteads (iron), folding beds (iron), cribs (iron), institu- tion beds (iron), knocked down, metallic couch frames, knocked down, or metallic folding couches (folded), plain or with brass trim- mings, metallic mattresses, and spring beds (com- pressed), wire cots, wooden folding cribs with woven wire bottoms (knocked down or folded flat), wire and spring beds and bottoms and canvas cots (not uphol- stered), minimum carload weight 24,000 pounds.....	175	100	185	110	188	113	193	118	200	125	210	135
Bedsteads (iron or brass), fold- ing beds (iron), cribs (iron), institution beds (iron), knocked down, minimum carload weight 24,000 pounds.		115		127		129		136		144		155
Camp furniture, folded flat, consisting of canvas cots, canvas-seat chairs, canvas- seat stools, and camp tables, minimum carload weight 30,000 pounds.....		155		171		174		183		194		209
Church pews, knocked down, in packages, minimum car- load weight 30,000 pounds.....		150		165		169		177		185		198
		150		165		169		177		185		198

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Furniture—Continued.												
Iron theater chairs, wood, cane, perforated seat, or upholstered, minimum carload weight 24,000 pounds.....		170		187		191		201		213		230
Kindergarten seats and tables, minimum carload weight 30,000 pounds.....		130		143		146		153		163		176
Mattresses and frames, metal. No wire cots, wooden folding cribs with woven wire bottoms (knocked down or folded flat), wire and spring beds and bottoms, and canvas cots, not upholstered, minimum carload weight 20,000 pounds.....	300	110	211	121	214	124	220	130	223	138	230	140
Settees, wooden, not upholstered. Same rate as chairs, and subject to same conditions as to wood, finish, and packages.												
Chairs, as follows: Cane-seated, leather-board, perforated wood or wooden-seated (not consisting wholly or partially of mahogany, rosewood, ebony, black walnut, or cherry), not reed, willow or rattan, finished or unfinished; not upholstered; camp and folding (not rockers), net cost not more than \$9 per dozen; also wood seats for chairs, perforated or unperforated, finished or unfinished, in straight or mixed carload minimum weight 20,000 pounds.....		115		127		129		136		144		155
Chairs, as from machine or bench, unfinished, in the white, not mahogany, rosewood, ebony, black walnut, or cherry; also wood seats for chairs, perforated or unperforated, unfinished, in the white, minimum carload weight 20,000 pounds.....		110		121		124		130		138		140
School seats or settees and desks for scholars, minimum carload weight 20,000 pounds.		125		138		141		148		156		160
NOTE.—Will not apply on chairs or seats similar in construction to theater chairs or seats.												
Table slides, in packages, minimum carload weight 40,000 pounds.....	150	100	165	110	160	113	177	118	188	185	203	135
G.												
Glass and glassware, as follows:												
Glass deck plates and sidewalk and vault tiles (plain or prism), in boxes, barrels, or crates.....	140	110	151	121	154	124	160	130	168	138	179	140
Glass, plate (not bent), and prism glass, n. o. s., boxed, minimum carload weight 24,000 pounds.....	220	150	235	165	230	160	247	177	258	188	273	208

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Glass and glassware—Continued.												
Glass, white or colored, deco- rated, cracked, enameled, ground, stained, and wired (wired plate glass excepted), boxed or crated.	175	125	188	138	191	141	198	148	206	156	219	169
Glass, rough rolled, viz, plain, figured, ribbed, and sheet prism; also pressed prism tiles (unframed), boxed or crated.	125	* 90	124	90	126	101	141	106	148	113	157	128
Glass, window, common, boxed Glassware (except out), n. o. s. (in boxes or barrels), and glass lamps, plain, in no way ornamented or decorated (in boxes, barrels, or casks); fruit or jelly glasses (value not to exceed 25 cents per dozen), and tops and top fastenings for same, in boxes or barrels; patch boxes (in boxes or barrels); also opal glassware not metal trimmed (in boxes, barrels, or casks), minimum carload weight 24,000 pounds.	170	* 120	182	132	185	135	192	142	200	150	212	169
Globes, are light, minimum carload weight 24,000 pounds.	170	120	182	132	185	135	192	142	200	150	212	169
Glass, are light, minimum carload weight 24,000 pounds.	175	85	184	94	186	95	190	100	196	106	205	115
Glue.	125	70	122	77	124	79	128	83	144	89	180	96
Grating, sidewalk, iron, with or without glass.	140	115	152	127	154	129	161	126	169	144	180	185
NOTE.—Grating glass may be forwarded in separate pack- ages.												
Grease, axle (not machine lubri- cant), including mineral or pe- troleum axle grease, in packages.	180	90	189	90	161	101	166	106	173	113	182	128
Grindstones (and frames), mount- ed or unmounted.	180	80	180	88	163	90	168	94	175	100	185	108
Gum copal, shellac, and kowrie.	125	100	100	110	133	113	138	118	145	125	145	126
Gum, pontianac.	125	85	124	94	126	96	140	100	146	106	156	115
Gunny cloth, compressed in bales. (See "Bags and bagging.")												
Hair (including hair in rope, but not including human hair) com- pressed in bales, minimum car- load weight 24,000 pounds.	175	125	188	138	191	141	198	148	206	156	219	169
Hair, plastering, in packages, min- imum carload weight 30,000 pounds.	180	100	160	110	163	113	168	118	175	125	186	126
H.												
Hammers, wooden, in boxes, crates or bundles.	128	160	145	110	148	113	153	118	160	125	170	126
Handles, wooden, in boxes, crates or bundles, as follows:												
Ax, adze, pick, sledge, hatchet, hammer, mallet, fork, hoe, rake, shovel, and peavy.	165	115	177	127	179	129	186	136	194	144	205	185
Broom or mop, with or with- out metal fixtures attached, but without heads.												
Plow, rough.												
Handles, wooden, in the white.												
Broom and mop, without metal fixtures, minimum carload weight 30,000 pounds.	126	95	144	94	146	95	150	100	156	106	165	115

* See opinion 520.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Hardware, as follows:												
Picks and mattocks, with or without handles, boxed.....	175	125	188	138	191	141	198	148	206	156	219	169
Adzes, with or without handles, boxed.....												
Axes, with or without handles, boxed, and axes, with handles, handles exposed and blades boxed or crated.....	175	125	188	138	191	141	198	148	206	156	219	169
Chain, trace and hobble.....	125	85	144	94	146	96	150	100	158	106	165	115
Saddlery, plain or nickel plated, including hames (not wooden), also composition martingale rings, in boxes or casks, stirrups, trace and hobble chains, any quantity.....		190		200		214		224		238		257
Hangers, rollers, and rail, barn door, hangers, parlor door (including track for same).....	175	110	186	121	189	124	195	130	203	138	214	149
Knobs for furniture, locks, and pictures, in packages.....												
NOTE.—Does not include brass or other trimmings or knobs for bedsteads in any form.....	175	125	188	138	191	141	198	148	206	156	219	169
Sash fasteners, in packages.....												
Locks, in packages.....												
Peavies, cant hooks, handles for same, pile poles, pick-rooms, skidding tongs, timber carriers, and parts thereof.....	165	115	177	127	179	129	186	136	191	144	205	155
Vises, iron.....	175	110	186	121	189	124	195	130	203	138	214	149
Service boxes, cast-iron.....		100		110		113		118		125		135
Rails (iron), track or door.....	125	85	134	94	136	96	140	100	146	106	155	115
Hollow ware, of cast iron only, plain or enameled, as follows:												
Pots, kettles, skillets, spiders, scotch bowls, long pans, and-iron heaters, griddles, waffle irons, broilers, caldron kettles, sugar kettles, pitch pots, bake ovens, sauce pans, boilers, gem pans, tea kettles, and hoppers (slop). Also the following stove furniture: Blowers, cover lifters, poker, scrapers, shakers, dampers, stove shovels and tongs, minimum carload weight 24,000 pounds.....	170	120	182	132	185	135	192	142	200	150	212	162
Horse collars, in bundles, boxes, or bales, minimum carload weight 20,000 pounds.....		125		138		141		148		156		169
Hose, rubber (with or without covering), in cases, crates, or bales.....	175	125	188	138	191	141	198	148	206	156	219	169
I.												
Incubators and brooders, minimum carload weight 24,000 pounds.....		135		149		152		159		169		182
Ink, in glass, stone, or paper bottles, boxed, or in tin cans, boxed, or in wood: mucilage, in boxes, barrels, or kegs, and stationers' paste (not confectioners' paste), straight or mixed carloads.....	135	90	144	90	146	101	151	106	158	113	167	122
Insulators, terra cotta, clay, glass, or porcelain, including insulators (similar to conduits), for use in buildings for protection against fire; also telegraph pins and brackets, in boxes, barrels, crates, or horseheads.....	125	90	134	90	136	101	141	106	148	113	157	122
NOTE.—Telegraph pins and brackets may be taken in bags.												

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Iron and steel, articles of: Bridge, wharf, gas house, and structural iron and steel, fabricated or unfabricated, consisting of— Angle; channel; bars; beams; columns; trusses; circular frames; girders; piling; braces; bridge railing; corrugated floor- ing; riveted and cast shoes; tubing, pier, rods (with head, eye, or screw threads); pulleys (tank or reservoir); weights; sees; tees; rails; joist hangers; post caps and bases; plate (No. 11 and heavier), punched or un- punched, bent or not bent; truss bars and cor- rugated bars for rein- forcing concrete con- struction; sidewalk and floor plates (without glass); rivets (not less than one-half inch in diameter); washers; nuts and bolts (not in- cluding carriage, wagon, machine, and lag bolts); anchor rods (for tele- graph or telephone poles); minimum car- load weight 30,000 pounds for each car used.												
Anvils, or anvils and vices combined.	125	80	134	88	136	90	141	106	148	113	157	122
Bar and slab (up to and in- cluding 6 inches in width), rod hoop or band, minimum carload weight 40,000 pounds.	130	80	133	88	140	90	144	94	150	100	158	108
NOTE.—Angles in bar shape not larger than 3 by 3 inches by three-six- teenths inch, and chan- nels in bar shape not larger than 3 inches will be entitled to above rates.												
Boiler, plate and sheet, No. 11 and heavier (black or galvanized), not bent, including boiler heads and ends, flat, unflanged, mini- mum carload weight 40,000 pounds.	130	80	133	88	140	90	144	94	150	100	158	108
Boiler, plate and sheet, n. o. s., Nos. 11 to 16, both inclusive (black or galvanized), not bent or punched, minimum car- load weight, 40,000 pounds.		85		94		96		100		106		115
Boiler heads or ends, flanged.	150	100	160	110	163	113	168	118	175	125	185	135
Bolts, nuts, washers, nut- locks, rivets, lag bolts, and lag screws.	130	80	133	88	140	90	144	94	150	100	158	108
Bolts and hinges (except spring), in boxes, kegs, barrels, or casks.	120	85	130	94	141	95	145	100	151	105	160	115

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Iron and steel, articles of—Cont'd.												
Bridge, wharf, gas house, and structural iron and steel, fabricated or unfabricated, consisting of—Continued.												
Castings, car seat, carriage, wagon, sleigh, agricul- tural implement, furni- ture, hose, plow, school desk and step ladder, in boxes, barrels, or crates..	160	115	177	127	179	129	186	136	194	144	206	156
Castings, n. o. a., plain, as from the sand, in no way hand or machine-fin- ished, except being drilled with bolt holes, but may be dipped or painted to prevent rust.		70		77		79		83		89		96
Ceiling, steel, in boxes, crates or bundles.....	150	110	161	121	164	124	170	130	178	138	189	149
Chain, n. o. a., minimum carload weight 40,000 pounds.....	125	75	133	83	134	84	139	89	144	94	151	101
Fire plugs, fire hydrants, and water gates, in mixed carloads.....		100		110		113		118		125		135
Gear wheels, rough, not in any manner machine- finished. Same as "Castings as from the mold, etc."												
Hasps, hooks, hoop keeps, staples, links, connect- ing links (not link belt- ing), lap links, and cold shuts, in boxes, kegs, or barrels.....	130	85	139	94	141	96	145	100	151	106	160	115
Axles and axle boxes, carriage and wagon.....	175	115	187	127	189	129	196	136	204	144	215	155
Box straps, in packages.....	130	80	138	88	140	90	144	94	150	100	158	108
Brick siding (steel), in pack- ages.....	175	125	188	138	191	141	198	148	206	156	219	169
Clevises, in boxes or barrels...	125	80	133	88	135	90	139	94	145	100	153	108
Conductor pipe, cove troughs, elbows, and trough hangers, in crates, minimum carload weight 20,000 pounds.....	170	120	182	132	185	135	192	142	200	150	212	162
Fence, knocked down; wrought-iron fence posts, fence picket tips, minimum carload weight 24,000 pounds.	150	100	160	110	163	113	168	118	175	125	185	135
Fire escapes, stand pipe, lad- ders, platforms.....		125		138		141		148		156		169
Forgings, rough, not machine finished.....	160	80	168	88	170	90	174	94	180	100	188	108
Hasps, hooks, hook keeps, staple, and lap links, in packages.....	120	85	139	94	141	96	145	100	151	106	160	115
Hydrants, n. o. a.....	150	100	160	110	163	113	168	118	175	125	185	135
Link belting, in packages.....	125	85	144	94	146	96	150	100	156	106	166	115
Pipe, n. o. a. (including riveted, spiral, or straight seam pipe); pipe or tubes, spiral weld; pipe, water, plate or sheet iron, riveted—minimum car- load weight 24,000 pounds...	150	100	160	110	163	113	168	118	175	125	185	135
Rolls for saw and rolling mills, including door rolls for lum- ber.....	160	110	171	121	174	124	180	130	188	138	199	149
Bullets, bloom, ingots, muck bar, scrap steel, minimum carload weight 60,000 pounds.	100	60	106	66	108	68	111	71	116	76	121	81

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Ironwork, consisting of:												
Architectural ironwork, viz.—												
Door, window and sky- light frames, and bronzed architectural iron, mini- mum carload weight 30,000 pounds.....												
Facings or fronts, mini- mum carload weight 30,000 pounds.....												
Ironwork for elevator cars and inclosures, mini- mum carload weight 30,000 pounds.....		125		138		141		148		156		169
Sidewalk canopies, mini- mum carload weight 30,000 pounds.....												
Stair work, viz., treads, stringers, brackets, rail- ings, newels, risers, and hangers, minimum car- load weight 30,000 pounds.....												
Lathing, wire (woven), corru- gated, perforated, or ex- panded metal flooring, metal concrete reinforcement, n. o. s., iron studding and corner beads, in boxes, crates, or bundles.....	160	100	170	110	173	113	178	118	185	125	195	135
Pig, minimum carload weight 60,000 pounds.....	100	40	104	44	105	45	107	47	110	50	114	54
Pipe fittings and connections, including clean-out fittings, cocks or valves, wrought, cast, or malleable, or iron body cocks, valves, and pipe connections (the bodies or principal parts of which are iron, but having brass pieces or parts), screwed, flanged, or with hub ends; also wrought-iron pipe bends, with or without wrought or cast-iron flanges.....	150	65	157	72	158	73	162	77	166	81	173	88
Pipe, cast-iron, and cast-iron connections for same.....	150	60	150	60	158	68	161	71	165	75	171	81
NOTE.—Does not include cast-iron connections for wrought-iron pipe.												
Pipe, wrought-iron or steel, welded, seamless, or lock bar (including boiler flues not over 12 inches in diameter), minimum carload weight 40,000 pounds.....	150	60	156	68	158	68	161	71	165	75	171	81
Rails, including mining rails, cross-ties (steel), and saw- mill track, minimum car- load weight 60,000 pounds, except when length of rails requires two or more cars, in which case the minimum carload weight will be 40,000 pounds for each car used, per ton of 2,240 pounds.....		1,100		1,210		1,238		1,298		1,375		1,487
NOTE.—Rails, cross-ties (steel), cross-tie fastenings, and rail fastenings, when shipped in mixed carloads, will take carload rate provided for each.												

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Ironwork, consisting of—Cont'd.												
Rail fastenings, viz—												
Angle bars, fish bars, rail joints, rail-joint splice bars, base plates, tie plates, track spikes, track bolts, track nuts, nut washers, nutlocks, rail braces, rail chairs, and steel clip fastenings for steel ties, minimum carload weight 60,000 pounds.....	125	55	131	61	132	62	135	65	140	70	144	74
NOTE.—Rails, cross-ties (steel), cross-tie fastenings and rail fastenings, when shipped in mixed carloads, will take carload rate pro- vided for each.												
Sales	200	175	218	193	222	197	232	207	244	219	261	236
Shafting, plain, without con- nections, minimum carload weight 40,000 pounds.....	.....	80	.....	88	.....	90	.....	94	.....	100	.....	108
Sheet, No. 12 and lighter (black or galvanized, but exclusive of planished or Russta), not bent or punched; corrugated, n. o. s., including ridge rolls, straight or mixed carloads, minimum weight 40,000 pounds.....	120	95	140	105	142	107	147	112	154	119	163	128
Sheet punched and rolled for pipe, but not riveted, mini- mum carload weight 24,000 pounds.....	150	100	160	110	163	113	168	118	175	125	185	135
Hay and shingle bands, iron or wire, in packages, minimum carload weight 40,000 pounds.....	130	70	137	77	139	79	143	83	149	89	155	95
Shoes, horse, mule, and ox, including toe calks, in boxes or kegs, minimum carload weight 40,000 pounds.....	130	70	137	77	139	79	143	83	149	89	155	95
Shutters and rolling steel doors.....	150	100	160	110	163	113	168	118	175	125	185	135
Stands, posts or bases for street lamps.....	150	100	160	110	163	113	168	118	175	125	185	135
Bucker rods in packages.....	130	80	138	88	140	90	144	94	150	100	158	108
Tank or reservoir material, viz, beams, columns, and circular frames for top.....	.....	80	.....	88	.....	90	.....	94	.....	100	.....	108
Tanks, steel, glass lined, mini- mum carload weight 24,000 pounds.....	.....	150	.....	165	.....	169	.....	177	.....	188	.....	203
Ties, balling, in packages, mini- mum carload weight 40,000 pounds.....	130	70	137	77	139	79	143	83	149	89	155	95
Tubing, open-seam (not bent), minimum carload weight, 40,000 pounds.....	125	60	131	66	133	68	136	71	140	75	146	81
Tubing, cut and bent in shape for bed ends.....	150	100	160	110	163	113	168	118	175	125	185	135
Vault, work, viz, safety-deposit vault boxes, vault carriages and omnibuses, vault tables, vault fittings, including iron safe and jail work.....	.....	185	.....	204	.....	208	.....	218	.....	231	.....	250

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
L.												
Lamps and fixtures:												
Lamps, glass, plain or deco- rated, net cost not exceeding \$3 per dozen, minimum car- load weight 24,000 pounds...	170	120	182	132	185	135	192	142	200	150	212	162
Lamps, glass, and glass lamps, with metal cups and trim- mings, plain or decorated (including shades and globes for same), net cost not ex- ceeding \$24 per dozen, mini- mum carload weight 16,000 pounds.....		150		165		169		177		188		208
Lamp frames, street, mini- mum carload weight 24,000 pounds.....		200		220		225		236		250		270
Lamp, gas or electric, shades or globes (com., press, or blown) n. o. s., minimum carload weight 24,000 pounds.		120		132		135		142		150		162
Lanterns (not including magic, paper, or toy lanterns) in boxes, barrels, casks, or crates, minimum carload weight 20,000 pounds.....	170	120	182	132	185	135	192	142	200	150	212	162
Lard and lard substitutes (n. o. s.), including cotton-seed cooking oil, in packages.....	180	125	193	138	196	141	203	148	211	156	224	169
Lawn mowers, hand, with or without grass catchers, boxed or crated, minimum carload weight 24,000 pounds.	166	115	177	127	179	129	186	136	194	144	206	156
Lead, bar, pig, sheet, or pipe and zinc, slab (spelter), mini- mum carload weight 40,000 pounds.....	125	75	133	83	134	84	139	89	144	94	151	101
Lead, black (or graphite), n. o. s., in packages.....	115	85	124	94	126	96	130	100	136	106	145	115
Lime, (including hydrated lime), in boxes, bags, or in bulk, minimum carload weight 40,000 pounds.....		50		55		56		59		63		68
Liquors, as follows:												
Alcohol (including wood alco- hol) and high wines, in bulk, in barrels or drums, mini- mum carload weight 24,000 pounds.....	175	90	184	99	186	101	191	106	198	113	207	122
Blackberry brandy in wood.....	175	175	193	193	197	197	207	207	219	219	236	236
Champagne.....	225	225	248	248	253	253	266	266	281	281	304	304
Liquors, n. o. s., in wood, mini- mum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
Liquors, n. o. s. (including fruit juice, n. o. s., but not including champagne), in glass.....	175	125	188	138	191	141	196	146	206	156	219	169
Whisky, in bulk, in barrels or drums, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	196	146	206	156	219	169
Grape juice (unfermented), in glass, boxed.....		110		121		124		130		138		149
Gin, in bulk, in barrels or drums, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	196	146	206	156	219	169
Whisky, gin, brandy, and New England rum and fruit juice in glass.....	175	125	188	138	191	141	196	146	206	156	219	169
Whisky, gin, brandy, and New England rum in wood.....	175	125	188	138	191	141	196	146	206	156	219	169
Wines, domestic (in glass).....	175	125	188	138	191	141	196	146	206	156	219	169

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Lumber, n. o. s. (including built-up, combined or veneered wood), except of value (i. e., cocobolo, ebony, lignum-vitae and rosewood), minimum carload weight 40,000 pounds.....	135	75	143	83	144	84	149	89	154	94	161	101
Lye (concentrated), and potash, in cans, boxed, minimum carload weight 40,000 pounds.....	100	60	106	66	108	68	111	71	115	75	121	81
M.												
Macaroni, noodles, and vermicelli, minimum carload weight 24,000 pounds.....	125	100	135	110	138	113	143	118	150	125	160	135
Mantels, wooden (including not to exceed one grate for each mantel), boxed or crated.....	225	175	243	193	247	197	257	207	269	219	286	236
Mantels, iron and slate, boxed or crated.....	165	110	176	121	179	124	185	130	193	138	204	149
Marble, granite, jasper, onyx, and slate blocks or slabs (including mantels, monuments, and tombstones, lettered or unlettered, plumbers' marble and printers' imposing stones), not otherwise specified:												
Sawn, dressed, or hammered, boxed or not boxed.....	150	100	160	110	163	113	168	118	175	125	185	135
Chiseled, traced, or polished, boxed or (if chiseled or polished surfaces are completely protected) crated.....												
Matches, in paper or wooden boxes, packed in metallic or wooden cases, minimum carload weight 24,000 pounds.....	160	110	171	121	174	124	180	130	188	138	199	149
Matting and mats, cocoas, in packages.....	185	100	195	110	198	113	203	118	210	125	220	135
Matting, mats, and rugs, grass, in packages.....	185	100	195	110	198	113	203	118	210	125	220	135
Meat (fresh) and dressed poultry, prepaid or guaranteed, straight or mixed carloads, minimum weight 20,000 pounds.....		175		193		197		207		219		236
Note.—Floor and meat racks and hooks of meat refrigerator cars will be returned free.												
Metal, in pigs (stereotype).....	150	100	160	110	163	113	168	118	175	125	185	135
Meters (except electric), boxed or crated.....	200	150	215	165	219	169	227	177	238	188	253	208
Milk, condensed, in hermetically sealed cans, boxed, or in bottles packed in boxes, or in wood, minimum carload weight 40,000 pounds.....	150	85	159	94	161	96	165	100	171	106	180	115
Mince meat and pie preparations, in glass, earthenware, or tin packages, boxed; in paper boxes, boxed; in pails, or tubs when packed in boxes, crates, or barrels; or in bulk in barrels, half barrels, kits, or kegs.....	140	90	149	99	151	101	156	106	163	113	172	122
Mining cars and dump cars, or parts thereof, also turntables and portable track for same, loaded on standard-gauge cars.....		125		138		141		148		156		169
Mining car wheels (with or without axles attached).....	150	90	159	99	161	101	166	106	173	113	183	122
Mineral water bottles returned.....		75		83		84		89		94		101
Mineral wool, minimum carload weight 24,000 pounds.....	150	100	160	110	163	113	168	118	175	125	185	135
Moldings, picture and frame, boxed or crated, minimum carload weight 24,000 pounds.....	135	100	145	110	148	113	153	118	160	125	170	135

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Mops, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
Moss, n. o. s., including sea grass, minimum carload weight 20,000 pounds.....	160	120	172	132	175	135	182	142	190	150	202	162
Musical instruments:												
Organs, melodeons, pianos, mechanical pianos, mechanical piano players, and automatic slot pianos, boxed; pipe organs; also organ and piano benches, chairs, and stools, straight or mixed, minimum carload weight 12,000 pounds.....		200		220		225		236		250		276
Upright pianos and organs (cabinet), wrapped and immovably braced in car (see note below), straight or mixed, minimum carload weight 12,000 pounds.....												
NOTE.—Unboxed upright pianos shipped in carloads must meet the following requirements in regard to loading:												
First. Each piano must be completely covered (except bottom) with paper hood and tarpaulin or rubber cover.												
Second. Each piano placed on wooden shoes not less than 2 inches thick, freeing casters from car floor.												
Third. To the back of each piano there must be attached two cleats not less than 1 inch thick and 6 inches wide, extending not less than 4 inches beyond either end of piano—one at top and one at bottom—each fastened with not less than 2½-inch screws, ends of cleats to be firmly secured to horizontal braces screwed to sides and ends of car, the whole forming a framework running full length and width of car and so secured as to absolutely prevent any end or side motion of pianos.												
Fourth. A sufficient space must be left between pianos to prevent rubbing or chafing.												
Fifth. All cleats and bracings to be of hard-wood lumber not less than 1 inch thick nor less than 6 inches wide.												
Unboxed organs to be securely braced in car in similar manner, except that it will not be required that cleats be fastened to instruments and if casters are removed, it will not be required that the organs be set on shoes.												
One empty box for return of wrappings and harness may be included with carload shipments of upright pianos and organs.												
Unboxed pianos and organs (cabinet), which are not harnessed as above stipulated will not be accepted for transportation.												

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
N.												
Nails and spikes (not including railroad spikes or ship and boat spikes), cut or wire, n. o. s., in boxes or kegs, mixed carload, minimum weight 40,000 pounds.....												
NOTE.—Estimated weight of 108 pounds per keg will apply on nails (only) when shipped in standard kegs. Actual weight will govern on spikes.												
Wire (fence), iron or steel—												
Smooth annealed, plain, or galvanized, mixed carload, minimum weight 40,000 pounds.....												
Barbed, galvanized, or painted, mixed carload, minimum weight 40,000 pounds.....		80		88		90		94		100		108
Staples, mixed carload, minimum weight 40,000 pounds.....												
Wire hoops, mixed carload, minimum weight 40,000 pounds.....												
Wire fencing, in rolls (including, if desired, staples, steel stay guards, stretchers and wire fence gates), and coarse wire netting for fencing, in packages, mixed carload, minimum weight 40,000 pounds.....												
Nails and spikes (not including railroad spikes or ship and boat spikes), cut or wire, n. o. s., in boxes or kegs, straight or mixed carload, minimum weight 40,000 pounds.....												
NOTE.—Estimated weight of 108 pounds per keg will apply on nails (only) when shipped in standard kegs. Actual weight will govern on spikes.												
Wire (fence), iron or steel—												
Smooth annealed, plain, or galvanized, straight or mixed carload, minimum weight 40,000 pounds.....		70		77		79		83		89		95
Barbed, galvanized, or painted, straight or mixed carload, minimum weight 40,000 pounds.....												
Staples, straight or mixed carload, minimum weight 40,000 pounds.....												
Wire hoops, straight or mixed carload, minimum weight 40,000 pounds.....												
Nails, horse, in boxes.....	140	90	149	99	151	101	156	106	163	113	172	122
Nails, cement-coated, in boxes or kegs, minimum carload weight 40,000 pounds.....	115	70	122	77	124	79	128	83	134	89	140	95
Nuts, edible, n. o. s. (not shelled), in packages, minimum carload weight 24,000 pounds.....	200	150	215	165	219	169	227	177	238	188	253	203
Peanuts, shelled or not shelled, in packages, minimum carload weight 24,000 pounds.....	175	130	188	143	191	146	198	153	208	163	221	176

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
O.												
Oil, viz: Castor, cocoanut, corn, palm, rubber, rapeseed, dead, etc., kion, lard, linseed, neat's- foot, red, resin, or "Y," tallow- transformer oils, minimum car- load weight 26,000 pounds.....	150	90	150	90	161	101	166	106	173	113	182	122
Petroleum and petroleum products as described under head of "Oils" in the Western Classification.....	.....	90	.....	90	.....	101	.....	106	.....	113	.....	122
Oil, lucol.....	150	90	150	90	161	101	166	106	173	113	182	122
Oil, rice.....	150	90	150	90	161	101	166	106	173	113	182	122
Oil, cotton seed, in cans, boxed, in barrels, or in bulk in tank cars; minimum carload weight when in cans, boxed, or in barrels, will be 26,000 pounds, and when in bulk in tank cars, full capacity of tank.....	150	90	150	90	161	101	166	106	173	113	182	122
Oil cake, oil-cake meal, and cotton- seed meal, minimum carload weight 40,000 pounds.....	.....	75	.....	83	.....	84	.....	89	.....	94	.....	101
Oilcloth (floor), linoleum, wood grain flooring and cork carpet, boxed, crated, or wrapped, car- riers' convenience, straight or mixed carload minimum weight 24,000 pounds.....	150	100	160	110	163	113	168	118	175	125	185	135
Onions, in packages, or in cars hav- ing fixed or transient crates for same, straight carloads, charges must be prepaid or guaranteed....	150	75	158	83	159	84	164	89	169	94	176	101
Oranges, in packages, prepaid or guaranteed, minimum carload weight 26,000 pounds.....	.....	125	.....	138	.....	141	.....	148	.....	156	.....	169
NOTE.—Rate of \$1.17½ per 100 pounds will apply from St. Louis, Mo., and East St. Louis, Ill., on shipments originating at points in Florida.												
Ore, iron, ground, minimum car- load weight 60,000 pounds.....	.....	60	.....	60	.....	68	.....	71	.....	75	.....	81
P.												
Packing-house products, viz: Ba- con, hams, beef, pork, lard, and lard substitutes (n. o. s.), in ind- ing cotton-seed cooking oil (in packages), sweet pickled tongues, pickled tripe, pigs' feet, sausage, sausage casings (packed solid, in kegs, barrels, or casks), and meats (canned or in glass), mini- mum carload weight 26,000 pounds.....	.....	133	.....	146	.....	150	.....	157	.....	160	.....	188
Group C rate will apply from Cedar Rapids, Des Moines, Marshalltown, Mason City, Ottumwa, Iowa, and Austin, Minn.												
NOTE 1.—Salt (not exceed- ing 1,000 pounds) will be trans- ported free with cars of bulk meat, the amount to be ascer- tained by weighing the salt remaining in cars at destina- tion. No charge will be made for weight of salts used as pre- servative in handling ship- ments of dry salted meats, in bulk, in carloads.												

*Subject to re-weighing in transit.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Packing-house products—Cont'd. NOTE 2.—Rates named on packing-house products will not apply on shipments of dressed beef or dressed pork. NOTE 3.—On shipments of sweet pickled meats in bulk, net invoice weight will be ac- cepted, subject to supervision of Western Railway Weighing Association and inspection bu- reau. Meat (fresh), prepaid or guaran- teed, in mixed carload, mini- mum weight 20,000 pounds..... Packing-house products, viz: Ba- con, hams, beef, pork, lard, and lard substitutes (n. o. s.), includ- ing cotton-seed cooking oil (in packages), sweet pickled tongues, pickled tripe, pigs' feet, sausage, sausage casings (packed solid, in kegs, barrels, or casks), and meats (canned or in glass), in mixed carload, minimum weight 20,000 pounds..... NOTE 1.—Salt (not exceed- ing 1,000 pounds) will be trans- ported free with cars of bulk meat, the amount to be ascer- tained by weighing the salt remaining in cars at destina- tion. No charge will be made for weight of salt used as pre- servative in handling ship- ments of dry salted meats, in bulk, in carloads. NOTE 2.—Empty refrigera- tor boxes, floor and meat racks and hooks of meat refrigerators will be returned free. NOTE 3.—Mixed carloads of fresh meats and packing-house products will be taken at the carload rate on actual weight of each commodity, subject to minimum charge of 20,000 pounds at the fresh-meat rate on entire shipment. NOTE 4.—On shipments of sweet pickled meats in bulk, net invoice weight will be ac- cepted, subject to supervision of Western Railway Weighing Association and inspection bu- reau.												
		175		193		197		207		219		236

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Paints, in cans (packed in boxes or barrels), or in barrels, casks, kegs, kits, boxes, or iron drums or in tin kegs (flat tops, inclosed in veneer or sheet-metal jackets):												
Paint, earth or mineral (including colored clay and mortar color), minimum carload weight 40,000 pounds.												
Paint, enamel, and enamel finish, minimum carload weight 40,000 pounds.												
Paint, dry zinc, oxide of zinc, leaded zinc, white or red lead, minimum carload weight 40,000 pounds.												
Paint, ground zinc in oil, minimum carload weight 40,000 pounds.												
Paint, white or red lead or litharge, dry or in oil, minimum carload weight 40,000 pounds.	115	85	124	94	126	96	130	100	136	106	145	115
Paint, white lead, ground in oil, minimum carload weight 40,000 pounds.												
Paint, bulk, minimum carload weight 40,000 pounds.												
Paint, dry, chemical, minimum carload weight 40,000 pounds.												
Paint, n. o. s., and paint drier, minimum carload weight 40,000 pounds.												
Putty, in cans, kegs, boxes, or barrels, minimum carload weight 40,000 pounds.												
Wall coating and wall finish, minimum carload weight 40,000 pounds.												
Note 1.—Wall coating and wall finish may be shipped in sacks.												
Paper and articles of paper:												
Paper: Building, n. o. s., roofing,* and felt (including indented paper).	110	65	117	72	118	73	122	77	126	81	133	88
* Note.—With carload shipments of roofing paper there may be included roofing cement or composition. Tin roofing caps and nails, not to exceed 10 per cent of weight of the entire carload, at the rate named.												
Paper: Book paper, not surface-coated, n. o. s.	110	75	118	83	119	84	124	89	129	94	136	101
Paper: News and poster.	110	75	118	83	119	84	124	89	129	94	136	101
Paper: Tissue paper and fruit paper (not printed).	110	75	118	83	119	84	124	89	129	94	136	101
Paper: Wrapping paper, n. o. s. (including wrapping paper, not printed, manila tag board, and tailors' pattern paper).	110	75	118	83	119	84	124	89	129	94	136	101
Paper: Wrapping (printed), in straight carloads, or mixed carloads of wrapping paper (printed or not printed), manila tag board, and tailors' pattern paper.		100		110		113		118		125		126

* Opinion 520 fixes rate on "paint, dry," and "paint in oil" at 90 from St. Paul and 105 from Chicago.

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Paper and articles of paper—Con. Paper bags, plain or printed, minimum carload weight 40,000 pounds (see Note)...	150	*100	160	110	163	113	168	118	175	125	185	135
NOTE.—Printed paper bags must be prepaid or guaranteed.												
Paper: Book (surface coated or enameled); soap and cover, col- ored or glazed; detail manila; blotting (not printed), and shelf.	140	90	149	99	151	101	156	106	163	113	172	122
Paper: Toilet and medicated toilet.	140	90	149	99	151	101	156	106	163	113	172	122
Paper: Envelopes (in boxes); ship- ping tags, paper, cloth, or cloth- lined; papeteries; cardboard, in- cluding cut cards (not printed) and paper photographic cards (cut or uncut); picture matting; check paper for cash registers; cigarette paper and wax or gummed paper	175	120	187	132	190	135	197	142	205	150	217	162
Paper, fly	175	120	187	132	190	135	197	142	205	150	217	162
Paper: Oiled or glazed wrapping...	140	90	149	99	151	101	156	106	163	113	172	122
Paper: Writing (flat), plain or ruled, including manila writing; ledger; linen and bond papers, and paper tablets	150	100	160	110	163	113	168	118	175	125	185	135
NOTE.—Will not apply on en- velopes, papeteries, folded writ- ing and folded note papers, or folded papers of any description.												
Paper: Writing, plain or ruled; ledger; deckle edge; note, in boxes or cases; paper napkins; lithographed bookbinders' paper and vegetable parchment	175	120	187	132	190	135	197	142	205	150	217	162
Paper hangings (not including decoration sets), veneering and Lincrusta Walton, minimum carload weight 24,000 pounds....	175	120	187	132	190	135	197	142	205	150	217	162
Paper, sand, flint, and emery....	160	110	171	121	174	124	180	130	188	138	199	149
Strawboard, tar board or binders' board, wood pulp, box board, in- cluding colored pulp board	125	75	133	83	134	84	139	89	144	94	151	101
Insulating or deadening paper for building purposes, minimum carload weight 24,000 pounds....	175	100	185	110	188	113	193	118	200	125	210	135
Paper labels, boxed or crated	175	120	187	132	190	135	197	142	205	150	217	162
Paraffin wax, boxed	150	90	159	99	161	101	166	106	173	113	182	122
Pickles, n. o. s., including capers; catsup; cauliflower; chili sauce; chutney; cucumber; dill weed; horse-radish; India relish; kraut; mangoes; mustard (prepared); olive oil; olives; onions; pepper sauce; pickled peppers; salad oil; table sauce, n. o. s.; tomato; vin- egar; Worcester sauce; in glass, earthenware, or tin packages, boxed; in pails or tubs when packed in boxes, crates, or bar- rels; or in bulk in barrels, half barrels, kits, or kegs	150	100	160	110	163	113	168	118	175	125	185	135
Pineapples, in packages, prepaid or guaranteed, charges to be computed on basis of railroad weight as ascertained at point of shipment, minimum carload weight 20,000 pounds.....	125	65	138	72	141	73	148	77	156	81	169	88
Pipe, sewer (clay) and drain tile...												

* See opinion 820.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Plaster, building, in packages, minimum carload weight 60,000 pounds.....		40		44		45		47		50		54
Rate from Hope, Irving, Long- ford, and Blue Rapids, Kans., will be 35 cents per 100 pounds; Medi- cine Lodge, Kans., 40 cents per 100 pounds.												
Rate from Carbon, Fort Dodge, and Gypsum, Iowa, will be 35 cents per 100 pounds.												
Potatoes.....		75		83		84		89		94		101
NOTE.—No charge will be made for stoves and linings used to pro- tect carload shipments of potatoes from October 1 to May 1, the maxi- mum allowance in weight therefor to be 1,500 pounds. Stoves and lin- ings so used will be returned free to original point of shipment.												
Poultry, alive, in coops, or in live- poultry palace cars, prepaid or guaranteed, minimum carload weight 20,000 pounds (subject to car rental charges).....		200		220		225		236		250		270
NOTE 1.—When shipments of live poultry, in carloads, are weighed at or near point of origin, it will be permissible to make an allowance of 3,000 pounds to cover feed, wa- ter, etc., when loaded in box, stock, or live-poultry cars, pro- vided that in no case shall less than the prescribed minimum carload weight be charged for. No allow- ance will be made from weights as- certained at point of destination.												
NOTE 2.—With one or more cars of live poultry, one man in charge of same will be passed in both di- rections. Return trip must be made within seven days after ar- rival at destination.												
Potash, chloride of, in cans boxed, or in barrels or casks.....		100		110		113		118		125		135
Powder, gun and black blasting powder of the same composition, minimum carload weight 24,000 pounds (see note).....		230		253		259		271		288		311
NOTE.—Rates named above for explosives are applicable in connection and in compliance with the regulations for trans- portation thereof fixed by the Interstate Commerce Commis- sion.												
Preserves (including mince meat, fruit butters, and jellies), in glass, earthenware, or tin packages, boxed; in pails or tubs when packed in boxes, crates, or bar- rels; or in bulk in barrels, half barrels, kits, or kegs.....	175	110	186	121	189	124	195	130	203	138	214	149
Pulleys (axle, frame, and window sash), in boxes or barrels.....	160	110	171	121	174	124	180	130	188	138	199	149
NOTE.—Will not apply on power shafting or other ma- chinery pulleys.												
Pumps, force, steam, electric, or other power, n. o. s., combina- tion brass and iron (parts thereof when boxed), minimum carload weight, 24,000 pounds.....		133		146		150		157		166		179

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise spec- ified.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Pumps, spraying (hand and power), minimum carload weight, 24,000 pounds.....	220	133	235	146	239	150	247	157	258	166	273	180
Pumps, hand (not including bicycle pumps), force, made of iron or wood (not rotary), with or without brass valves, cylinders, drive-well points and strainers for same (parts thereof when boxed); also hydraulic rams, hand-spray pumps, hand spraying machines and knapsack sprayers, minimum carload weight 24,000 pounds.....	.....	133	.....	146	.....	150	.....	157	.....	166	.....	180
Fumice stone, minimum carload weight, 24,000 pounds.....	125	75	133	83	134	84	139	89	144	94	151	101
R.												
Radiators, cast-iron, in straight carload, minimum weight, 40,000 pounds.....	.....	100	.....	110	.....	113	.....	118	.....	125	.....	135
Railway equipment: Cars, narrow gauge or parts thereof, knocked down, loaded on standard-gauge cars; in cents per 100 pounds.....	.....	135	.....	149	.....	152	.....	159	.....	169	.....	182
Railway supplies, for steam or street railways, viz.: Air-brake equipment (including motors or air compressors), bolsters and bolster bearings, chairs, track braces, frogs, crossings, spikes, splices and bolts, Miller hooks, buffers, links, pins, truck frames, springs, equalizers, brake beams, brake heads, brake shoes, journal or oil boxes, locomotive tires, car sills and under frames, set up or knocked down, transoms, car brakes, car couplers and parts, car springs, drawbars, drawheads, followers, switch stands and attachments, cattle guards (iron), car wheels and axles, railroad iron, water stand pipe and parts thereof, turntables, and water tank fixtures.....	.....	133	.....	146	.....	150	.....	157	.....	166	.....	180
Brake shoes, minimum carload weight, 50,000 pounds..	150	65	157	72	158	73	162	77	166	81	173	88
Car wheels and axles, minimum carload weight 40,000 pounds.....	150	65	157	72	158	73	162	77	166	81	173	88
Links, pins, truck frames, equalizers, bolsters and bolster bearings, brake beams, brake heads, brake shoes, brake shafts, brake wheels, brake chains, journal or oil boxes, car couplers and parts, car springs, drawbars, drawheads (not automatic), followers, rail guards, switches and mates, switch points, frogs, crossings, car wheels and axles, minimum carload weight 40,000 pounds.....	150	100	160	110	168	113	168	118	175	125	185	135

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Refrigerators, including refriger- ator display cases, minimum carload weight 16,000 pounds....	175	135	189	149	192	152	199	159	209	169	222	182
Resin, in barrels, minimum car- load weight 40,000 pounds.....	100	55	106	61	107	62	110	65	115	70	119	74
Retorts and retort settings, clay (including tank blocks for glass furnaces) and fire brick, minimum carload weight 24,000 pounds.....	.....	95	.....	105	.....	107	.....	112	.....	119	.....	128
Rice and broken rice and brewers' rice, minimum carload weight 40,000 pounds.....	110	60	116	66	118	68	121	71	125	75	131	81
Rice, rice flour, rice meal, rice flakes or flaked rice, and broken rice, minimum carload weight 40,000 pounds.....	125	85	134	94	136	96	140	100	146	106	155	115
Roof coating, roofing cement, ce- ment roofing, n. o. s., asbestos roofing, asbestos cement, roofing paint or coating and roofing pa- per saturated with composition and graveled, in packages.....	150	75	158	83	159	84	164	89	169	94	176	101
NOTE.—With carload ship- ments of above-mentioned ar- ticles, there may be included tin roofing caps and nails not to exceed 10 per cent of weight of entire carload at the rate named.												
Rubber boots and shoes, including tennis shoes (canvastops), boxed, minimum carload weight 24,000 pounds.....	.....	150	.....	165	.....	169	.....	177	.....	188	.....	203
NOTE.—Rubber boots hav- ing leather soles are ratable as rubber boots.												
Rubber clothing (not including mackintoshes or garments of similar character) and rubber gloves and soft rubber hats, boxed, minimum carload weight 24,000 pounds.....	235	175	253	193	257	197	267	207	279	219	296	236
Rubber packing and rubber belt- ing.....	.....	120	.....	132	.....	135	.....	142	.....	150	.....	162
Rubber rings for fruit jars, in boxes or barrels.....	150	100	160	110	163	113	168	118	175	125	185	135
Rubber tires (not pneumatic) for buggy and carriage wheels, boxed, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
Rubber tubing, in cases, crates, or bales, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
S.												
Saddlery and harness: Harness, n. o. s., minimum carload weight 20,000 pounds.....	.....	200	.....	220	.....	225	.....	236	.....	250	.....	270
Sadiron (not including electric sadiron nor gas, gasoline, char- coal or alcohol burning sadiron), and handles for same when packed with sadiron, in boxes or barrels.....	130	85	139	94	141	96	145	100	151	106	160	115
NOTE.—Sadiron stands, when shipped with sadiron, will take the same rates as pro- vided for sadiron.												
Saleratus and bicarbonate of soda and soda carbonating compound.	170	120	182	122	185	135	192	142	200	150	212	162

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Salt, minimum carload weight 40,000 pounds.....	110	50	115	55	116	56	119	59	123	63	128	68
Sand, and facing, flint sand, fire sand, and ground sand, minimum carload weight 60,000 pounds.....		50		55		56		59		63		68
Sash weights and balance weights for folding beds and lounges; also counterweights, minimum carload weight, 60,000 pounds.....	100	40	104	44	105	45	107	47	110	50	114	54
Sash, doors, and blinds, wooden (glazed surfaces must be protected by boards not less than three-eighths inch in thickness); door, window and screen frames; carpenters' moldings for door frames and for inside finishing, and inside finishing, in the white; lumber, lath, and shingles.....		85		94		96		100		106		115
NOTE.—The above provision for sash and doors will not apply on sash and doors glazed with other than common window glass.												
Sash, doors, and blinds, wooden (glazed surfaces must be protected by boards not less than three-eighths inch in thickness), door and window frames, carpenters' moldings for door frames and for inside finishing, and inside finishing, covered with iron or steel, plain, bronzed, or coppered.....		95		105		107		112		119		128
Sash, doors, and blinds, wooden (glazed surfaces must be protected by boards not less than three-eighths inch in thickness), door, window, and screen frames, carpenters' moldings for door frames and for inside finishing, and inside finishing (including clothes closets, completely knocked down), rubbed, oiled, and varnished.....		130		143		146		153		163		176
Sash, doors, and blinds (glazed surfaces must be protected by boards not less than three-eighths inch in thickness), door, window, and screen frames, moldings for door frames and for inside finishing, and inside finishing, made of iron or steel, plain, bronzed, or coppered.....		130		143		146		153		163		176
Saws, circular, mill, crosscut, and drag, on boards or boxed; saw plates, in packages; also band saws, crated, minimum carload weight 24,000 pounds. (See note).....	220	*150	235	165	239	169	247	177	258	188	273	203
NOTE.—Saw handles, teeth, and saw tools may be included with above when in mixed carloads, at the carload rate.												
Scales and scale beams, n. o. s. (not including computing scales, gold weighing scales, nor assayers' or apothecaries' scales), all fragile parts boxed or crated, minimum carload weight 24,000 pounds.....	170	120	182	122	185	125	192	142	200	150	212	162

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Scouring, washing, polishing, and sweeping compounds, n. o. s. (not including liquid compounds, except when in tin cans, boxed); also washing crystals, minimum carload weight 40,000 pounds.....	130	80	138	88	140	90	144	94	150	100	158	108
Scrapers, road, road machine, grading plows, land graders, and street rollers, minimum carload weight 24,000 pounds.....	200	140	214	154	218	158	225	165	235	175	240	180
Seed: Alfalfa, beet, clover, grass, hemp, mustard, rape, bird, timothy, millet, and canary; Kaffir-corn seed, broom-corn seed; also wheat, corn, pop corn, oats, pease, and beans.....	125	100	135	110	138	113	143	118	150	125	160	135
Seed, flax; seed, garden, and sunflower.....												
Seed, sorghum.....												
Sewing machines and component parts, in boxes or crates, minimum carload weight 20,000 pounds.....	220	150	235	165	239	169	247	177	258	188	273	208
Sheep dip, liquid.....	190	65	197	72	198	73	202	77	206	81	213	86
Sheep dip, liquid, paste, or powdered.....	190	85	199	94	201	96	205	100	211	106	220	115
Shoes, heads, rings, tires, or dies (for quart mills), also cams and tappets, iron or steel, minimum carload weight 40,000 pounds.....	130	90	139	99	141	101	146	106	153	113	162	122
Shot, in bags.....	125	75	133	83	134	84	139	89	144	94	151	101
Sinks (and backs for same), cast-iron, plain, painted, galvanized, porcelain-lined or granite-lined, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
Sinks (and backs for same), sheet-iron or sheet-steel, plain, painted, galvanized, porcelain-lined, or granite-lined, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
Slates, school, boxed.....	135	85	144	94	146	96	150	100	156	106	165	115
Slids, bob, minimum carload weight 24,000 pounds.....		115		127		129		136		144		155
Slidges, wedges, and manils, iron or steel, in boxes, barrels, or crates.....	130	85	139	94	141	96	145	100	151	106	160	115
Soap, soap chips, and soap powder, in packages, minimum carload weight 40,000 pounds.....	130	80	138	88	140	90	144	94	150	100	158	108
Soda ash (may be shipped in sacks), soda crystals, caustic soda and hyposulphite, nitrate (may be shipped in sacks), silicate (may be shipped in sacks), and sulphate of soda, sulphide of sodium, chloride of lime (may be shipped in casks) in kegs, boxes, or iron drums, minimum carload weight 40,000 pounds.....	110	55	116	61	117	62	120	65	125	70	129	74
Solder, minimum carload weight 40,000 pounds.....	125	80	133	88	135	90	139	94	145	100	153	108
Spices, n. o. s., including cassia, cloves, ginger, nutmegs, pepper, celery, coriander, cummin, caraway seeds, ground sage, in packages, minimum carload weight 24,000 pounds.....	175	125	188	138	191	141	198	148	206	156	219	169
Springs, bed, spiral, in boxes or crates, minimum carload weight 24,000 pounds.....	175	110	186	121	189	124	195	130	208	138	214	140

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Springs, wire, n. o. s., in boxes or casks, minimum carload weight 24,000 pounds.....	175	110	186	121	189	124	196	130	203	138	214	140
Springs, automobile, carriage, wagon and wagon bolster, and wagon seat springs, n. o. s.; also iron or steel axles and axle boxes and nuts.....	175	115	187	127	189	129	196	136	204	144	215	155
Stamped ware:												
Agate or enameled, n. o. s., also granite ironware, n. o. s., in boxes, barrels, or crates, minimum carload weight 22,000 pounds.....	170	120	182	132	185	135	192	142	200	150	212	162
Stamped ware, n. o. s., nested (not agate, granite, or ename- leled ware), in boxes, barrels, or crates, minimum carload weight 22,000 pounds.....	170	120	182	132	185	135	192	142	200	150	212	162
[The following articles may be taken in mixed carloads with stamped ware at rate named below: Cans, kegs, and pails made of sheet iron or steel, n. o. s.; coal hods or scuttles, nested; copper wash boilers; copper tea kettles (not plated); galvanized children's bath tubs; galvanized foot tubs; gal- vanized garbage and ash bar- rels; galvanized-iron buckets and tubs; galvanized iron wash bowls and pans; galvanized cans; galvanized sheet-iron mangers; iron ladles, skimmers, and cake turners; japanned or laquered tinware, including japanned tin water coolers; metal toasters; milk shipping cans (may be taken loose); oilers (not including brass and glass oil cups); boxed, pierced, square, and round pans, nested; stamped iron dripping pans; stamped Russia iron mining pans; tin broom locks; tinned bucket ears; tinned iron handles; tinner's stamped trimmings; tin scoops, nested; tin spoons, boxed; tinned spoons, boxed; tubed cake pans, nested; zinc or tin can screws.]												
NOTE.—Galvanized-iron buckets, tubs, bowls, and pans may be taken nested, in pack- ages securely bound.												
Mixed carloads of articles described in the bracketed paragraph, in- cluding, if desired, tinware, in boxes, barrels, or crates, mini- mum carload weight 22,000 pounds.....		120		132		135		142		150		162
Starch (including corn starch) and dextrine.....	150	100	160	110	163	113	168	118	175	125	185	135
Staves and heading, hoops, and bolts (will not apply on tank or vat stuff).....	135	85	144	94	146	96	150	100	156	106	165	115
Stone, rough, sawed, hammered, chiseled, or cut to dimension, not polished or lettered and not including marble, minimum car- load weight 40,000 pounds.....		80		55		86		80		65		60

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise spec- ified.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Stove furniture. (See Hollow- ware.)												
Stovepipe iron (cut to shape), nested, solid, boxed, or crated, minimum carload weight 40,000 pounds.		95		105		107		112		119		128
Stoves, as follows: Stoves, heat- ing, air-tight, sheet-iron, with or without cast-iron tops and base; portable bake ovens; sheet- iron drums (for heating); also, including, if desired, stoves (cast-iron), cooking, heating (in- cluding stoves with cast-iron tops, bottoms, and linings, or cast-iron ends and linings); laundry stoves; cast-iron or steel ranges, with or without gas- stove attachments; farmers' combination stoves with cal- drons for same, and extra cast- iron parts of the above-men- tioned articles, minimum car- load weight 20,000 pounds.												
Iron fireplaces and grates for same, n. o. s., made of wrought or cast iron; also furnace grates, gas grates (boxed or crated); port- able fireplaces and portable steam radiating mantels; iron linings; grate dampers and and- irons (iron), minimum carload weight 24,000 pounds.		133		146		150		157		166		188
Stoves or grates, gas, oil, and gaso- line, and ovens, cabinets and extra iron or steel parts of above- mentioned articles, boxed or crated, minimum carload weight 20,000 pounds.		133		146		150		157		166		188
Furnaces, air or steam; furnace castings; radiators, registers, and iron floor or wall ventilators; rotary blowers (not forge blow- ers), without power apparatus; cast-iron fire doors for partitions; steam or hot-water heating ap- paratus, viz. boilers, iron pipe, iron pipe fittings, radiators, reg- isters, steam gauges, steam traps, and valves, minimum carload weight 24,000 pounds.		133		146		150		157		166		188
Gas and gasoline water heaters, boxed or crated, minimum car- load weight 20,000 pounds.		130		143		146		153		163		176
Sugar, maple.	250	* 170	267	197	271	191	281	201	223	213	310	230
Sweat and collar pads, and harness pads (not leather), boxed or in bales, minimum carload weight 20,000 pounds.	150	100	160	110	163	113	168	118	175	125	185	125
Syrup (corn, glucose, malt, maple, and rock candy) molasses; glu- cose (in barrels); glucose jelly (in barrels, kegs, kits, or pails)	175	125	188	138	191	141	198	148	206	156	219	160
T.	125	65	132	72	133	73	137	77	141	81	148	88
Tacks, iron, n. o. s., in boxes, kegs, or barrels, minimum carload weight 24,000 pounds.	145	95	155	105	157	107	162	112	169	119	178	128
Terra cotta, building.		75		83		84		89		94		101
Tile, roofing.		70		77		79		83		89		95

* See opinion 820.

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Tile, earthen or encaustic for floor- ing and facing, plain or figured, glazed or unglazed, also enamel- ed brick.....	125	80	133	88	135	90	139	94	145	100	153	108
Tiling, opalite glass, boxed or crated.....	125	80	133	88	135	90	139	94	145	100	153	108
Tin and articles of tin:												
Tin andterne plate (flat as from the mill, not further manufactured), in boxes, minimum carload weight 40,000 pounds.....	100	55	106	61	107	62	110	65	115	70	119	74
Tinware, in boxes, barrels, or crates, minimum carload weight 22,000 pounds.....	220	120	232	132	235	135	242	142	250	150	262	162
Tobacco, domestic, unmanufact- ured, in cases or in hogheads, minimum carload weight 20,000 pounds.....	175	150	190	165	194	169	202	177	213	188	228	203
Note.—Porto Rican and Cuban tobacco will not be con- sidered domestic tobacco.												
Tobacco, smoking, in bales or cases, minimum carload weight 40,000 pounds.....		175		193		197		207		219		236
Tobacco stems and refuse tobacco for sheep dip, in packages, mini- mum carload weight 20,000 pounds.....	175	120	187	132	190	135	197	142	206	160	217	163
Tomatoes, fresh, minimum carload weight 24,000 pounds.....		100		110		113		118		125		136
Toys, as follows: Children's tea sets (crochery or other); marbles; toy alphabet and building blocks, wood or stone; toy banks, iron; toys, n. o. s.; children's and toy wagons; hobby-horses; rocking teams; doll carriages; children's sleds; hoops, rolling; toy hand- power "merry-go-rounds;" tee- tens and seesaws; instructive toys for use in kindergartens, made of wood and paper; toy games; games, n. o. s. (including game boards); toy books; toy musical instruments, n. o. s., in- cluding harmoniums, net cost not more than 25 cents per dozen, boxed; toys, tin, lead, or iron, n. o. s. including toy sad irons; toy torpedoes and toy caps; toy trumpets; toy furniture (not including children's furniture); toy banks, n. o. s.; toys, mathe- matical and mechanical, in straight or mixed carloads, mini- mum weight 20,000 pounds.....		150		165		169		177		188		203
Trucks, store, and warehouse, in- cluding baggage wagons (hand) knocked down, baggage bar- rows, knocked down, dollies and dry kiln and lumber trucks, but excluding willow basket and leatheroid trucks, minimum car- load weight 24,000 pounds.....	190	140	204	154	208	158	215	165	225	175	239	189
Tricycles and velocipedes, child- ren's toy wagons, and toy wheelbarrows, minimum car- load weight 20,000 pounds.....		150		166		169		177		188		203
Trunks and valises, travelers' can- vas telescopes, minimum car- load weight 12,000 pounds.....		260		286		293		307		325		361

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise spec- ified.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Trunks, empty, or packed with traveling bags, telescopes, and valises; or traveling bags, tele- scopes, and valises, minimum carload weight 12,000 pounds....		260		286		293		307		325		351
Tubs, stationary wash, cast-iron (plain, painted, galvanized, granite-lined, or porcelain-lined), minimum carload weight 24,000 pounds.....		140		154		158		165		175		189
Twine and cordage, viz: Cotton, flax, hemp, jute, fleece, sail, spring, sisal, manila, and cotton seine twine and cordage, and fish netting twine (cotton), in bales, boxes, or barrels.....	175	*125	188	138	191	141	196	148	205	186	219	189
Rope, all kinds, except wire or hair.....												
Type, boxed.....	175	110	186	121	189	124	196	130	208	138	214	149
V.												
Varnish, in barrels, or in cans boxed, in straight carloads, or in mixed carloads with paints, as described on page 204, taking same rate in carloads.....	115	86	124	94	126	96	130	100	136	106	145	118
NOTE.—Mixed carload ship- ments of varnish and paints will be subject to minimum carload weight of 40,000 pounds.												
W.												
Wagon material, viz, sawed fellos, axles, bolsters, reaches, wagon bonds, wagon poles, and plow beams (wooden), as sawed from rough lumber, and hub blocks; also club spokes, roughed out as from the lathe.....	140	75	148	83	149	84	154	89	159	94	166	161
NOTE.—Hardwood lumber may be forwarded in mixed carloads with articles above enumerated, at the carload rate named above.												
Wagons:												
Wagons, farm, and common dump carts, without springs; dump wagons; hand or push carts, n. o. s.; lumber bug- gies; logging wagons and log- ging wheels and trucks; and extra parts (finished) of above-mentioned vehicles; also, farm and bob sleds, straight or mixed carloads, minimum carload weight 24,000 pounds.....		115		127		129		136		144		155
Wagons, tank (including sprinkling wagons), and ex- tra parts for same, minimum carload weight 24,000 pounds												
Wall coating and wall finish, n. o. s.; dry, in packages, minimum car- load weight 40,000 pounds.....	115	81	166	73	77	123	72	122	127	81	136	89

* See opinion 820. R. to Seattle is 96.

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Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Washing machines, including wringers for same, also dish- washing machines, boxed or crated, minimum carload weight 20,000 pounds.....	200	150	215	165	219	169	227	177	238	188	253	203
NOTE.—Motors for washing machines must be detached and boxed.												
Wash bowls, including stands, iron knocked down (lavatories), plain, painted, galvanized, gran- ite-lined or porcelain-lined, min- imum carload weight 24,000 pounds.....		140		154		158		165		175		189
Water-closet cisterns (with or without fixtures), seats and flush pipe boards and bath and wash tub rims, boxed or crated, minimum carload weight 20,000 pounds.....	220	140	234	154	238	158	245	165	255	175	269	189
Water-closet bowls, cisterns and urinals, iron (plain, painted, galvanized, granite-lined, or por- celain-lined), and metal attach- ments therefor, boxed or crated, minimum carload weight 24,000 pounds.....	200	140	214	154	218	158	225	165	235	175	249	189
Wheelbarrows, knocked down, down, wheelbarrow wheels and barrel carts (knocked down), minimum carload weight 24,000 pounds.....	195	*90	204	99	206	101	211	106	218	113	227	122
Window curtain poles, and fix- tures for same, minimum carload weight 24,000 pounds.....		110		121		124		130		138		149
Window shade rollers, wooden or tin, with or without springs, and fixtures for same, minimum car- load weight 24,000 pounds.....												
Window shade slats, wooden, and fixtures for same, minimum car- load weight 24,000 pounds.....												
Windmills and parts of same, in- cluding tanks and towers, wood or metal, windmill pumps, and small quantity of pipe necessary to connect pump heads and cyl- inders, minimum carload weight 24,000 pounds.....	195	*135	209	149	217	*157	219	159	229	169	242	182
Wire and wire goods:												
Wire (fence), barbed, includ- ing staples, steel stay guards and stretchers, minimum carload weight 40,000 pounds.....		*80		88		*93		94		100		108
Wire, insulated, n. o. s.....	165	110	176	121	179	124	185	130	193	138	204	149
Wire, iron, plain, galvanized, tinned, or coppered (includ- ing, if desired, steel stay guards), minimum carload weight 40,000 pounds.....	115	70	122	77	124	79	128	83	134	89	140	95
Window screen, door and bat- tery cloth (boxed or crated); wire cloth and netting (in packages); coarse wire net- ting for fencing (in bundles or rolls).....	160	120	172	132	175	135	182	142	190	150	202	162
Wire fencing, in rolls, includ- ing, if desired, staples, steel stay guards, stretchers, and wire fence gates, and coarse wire netting for fencing, in packages.....	175	80	183	88	185	90	189	94	195	100	203	108

* See opinion 320.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Wire and wire goods—Continued.												
Wire rods, minimum carload weight 40,000 pounds.....	130	70	137	77	139	79	143	83	149	89	155	95
Wire rope and cable, iron or steel, n. o. s.; wire guy strands.....	160	110	171	121	174	124	180	130	188	138	199	149
Wire telephone or electric light cables, consisting of cable made up of insulated copper wires in lead pipes; also cop- per wire, copper rope, or cop- per cable, with or without insulation.....	165	110	176	121	179	124	185	130	193	138	204	149
Wire, aluminum, also alumi- num rope and cable.....	225	150	240	165	244	169	252	177	263	188	278	203
Wire, mattress (woven), mini- mum carload weight 20,000 pounds.....	165	120	177	132	180	135	187	142	196	150	207	162
Fencing wire (consisting of or- namental strip, wire fence board, and wire panel, wire nettings, and iron and steel wire cloth, exclusive, 30- mesh or finer), in packages...	175	80	183	88	185	90	189	94	196	100	203	108
Wire screens, door and win- dow, minimum carload weight 24,000 pounds.....	125	100	135	110	138	113	143	118	150	125	160	135
Wire, copper.....		* 110		121		124		130		138		149
Woodenware, in packages, as fol- lows: Bale boxes (wooden), bale handles, barrel covers, barrels (paper), baskets (wooden), bot- tle corks (wooden), bowls, boxes (nested), boxes (wooden), bungs, bung starters, butter boxes, butter dishes (must be packed in boxes, crates, or bun- dles), butter molds, butter trays, butter tubs, cheese boxes, churns (hand), clothes folding racks, clothes horses, clothes lifters, clothes pins, coat racks or hangers, cocoa dippers, curtain stretchers, dowels (must be packed in crates or sacks), drums (set up), dust pans, faucets, firkins, fish barrels, hat racks (hall) in the white (not furni- ture), hoops, hose menders, iron- ing boards, kegs, kits, knife boxes, ladder rungs (must be packed in boxes, crates or sacks), ladders, ladles, lapboards, lemon squeezers, mallets, match safes, measures (nested), pails, includ- ing fiber ware pails (nested), pails (with mop wringer attach- ments), pastry boards, plates (including pulp pie plates and pulp butter dishes), nested, plugs, potato mashers, rolling pins, rope reels, salt boxes, scoops, sheaves, shot cases, sieves and rims, skewers, skirt boards, snow shovels, spades, spice cabinets, spoons, n. o. s., spoons, steak mauls, tea caddies, toothpicks, towel racks (with- out mirrors), towel rollers, trays, tubs, including fiber ware tubs (nested), vegetable cutters, wash- boards, wedges, well buckets, in straight or mixed carloads, mini- mum weight 16,000 pounds.....	200	* 125	213	186	216	141	223	148	231	156	244	169

* See opinion 220.

Statement of proposed commodity rates to Spokane, Wash., from eastern defined territories—Continued.

Commodity. (Minimum carload weight 30,000 pounds, unless otherwise speci- fied.)	Missouri River territory.		Mississippi River territory.		Chicago territory.		Detroit territory.		Pittsburg territory.		New York territory.	
	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.	L. C. L.	C. L.
Woods of value: Rosewood, ebony, lignum-vita, and cocobolo	150	100	160	110	163	113	168	118	175	125	185	135
Wrappers, bottles, indented and corrugated paper, and corru- gated strawboard, in packages, minimum carload weight 24,000 pounds.	150	100	160	110	163	113	168	118	175	125	185	135
Wrappers, bottle, glass, wood, sheet, or straw, in packages, minimum carload weight 24,000 pounds.	150	100	160	110	163	113	168	118	175	125	185	135
Zinc plate, zinc sheet, in casks or boxes, minimum carload weight 40,000 pounds.	175	125	188	138	191	141	198	148	206	156	219	169
Zinc slab (spelter), minimum car- load weight 40,000 pounds.	125	75	133	83	134	84	139	89	144	94	151	109
Zinc chloride, in barrels or boxes.	170	100	180	110	183	113	188	118	195	125	205	135
Zinc sulphate, in packages.	170	80	178	88	180	90	184	94	190	100	198	108

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No. 2662.

COMMERCIAL CLUB, TRAFFIC BUREAU, OF SALT LAKE
CITY, UTAH,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted December 16, 1909. Decided June 7, 1910.

1. This Commission has said that in determining a freight rate which must of necessity be charged by competing lines, it would not look exclusively to that line which could handle the business the cheapest or which was the strongest financially, but would consider as well the weaker rival; yet it has never intimated that the rate should be fixed solely with reference to the weakest line, and it would certainly be most unjust to the public, in establishing these rates, to consider merely the expensive and circuitous route.
2. Present class rates in both directions between Chicago, the Mississippi River, and the Missouri River, upon the one hand, and Utah common points, upon the other, found unjust and unreasonable to the extent that they exceed those named in this report.
3. Present westbound commodity rates from the above-named eastern points of origin to Utah common points found unreasonable to the extent that they exceed those named in this report.
4. Present eastbound rates on certain products of Utah to the Missouri River, the Mississippi River, and Chicago found unreasonable to the extent that they exceed those named in this report.
5. Present rates on deciduous and citrus fruits from points of production in California to Utah common points found unreasonable to the extent that they exceed those named in this report.
6. Defendants should establish to Utah points proportional import rates upon certain named articles which do not exceed those contemporaneously in force to the Missouri River, and the present rates upon sago, tapioca, tea, and tea dust found unreasonable to the extent that they exceed those now in effect to Missouri River points.
7. Present passenger fares between Utah common points, on the one hand, and between Ogden, Omaha, and Portland, on the other, not found unreasonable; but present fares between Salt Lake City and Los Angeles, Salt Lake City and San Francisco, and between Ogden and Provo and San Francisco found unreasonable.
8. The complaint alleges that defendants pool traffic from the east to Utah points; but the record contains no proof of this allegation, and the point was not pressed upon the argument.

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9. An order will be issued in accordance with the opinion herein, except in case of class and commodity rates between eastern defined territories and Utah points, as to which no order at present will be made; but defendants will be required to keep account for three months, showing the difference between their receipts upon traffic actually moved under present rates and what those receipts would have been had these proposed rates been in effect.

Charles C. Dey and *S. H. Babcock* for complainant.

N. H. Loomis, P. L. Williams, C. W. Durbrow, W. W. Cotton, P. F. Dunne, and *F. C. Dillard* for Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon Railroad & Navigation Company, and Southern Pacific Company.

James C. Jeffery and *Martin L. Clardy* for Missouri Pacific Railway Company.

E. N. Clark for Denver & Rio Grande Railroad Company.

W. R. Kelly and *A. S. Halsted* for San Pedro, Los Angeles & Salt Lake Railroad Company.

Hale Holden and *C. G. Burnham* for Chicago, Burlington & Quincy Railroad Company.

E. B. Peirce and *S. H. Johnson* for Chicago, Rock Island & Pacific Railway Company.

S. A. Lynde for Chicago & North Western Railway Company.

E. J. McVann for Commercial Club of Omaha, Nebr., intervener.

H. G. Wilson for Commercial Club, of Kansas City, Mo., intervener.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint is brought by the business interests of Salt Lake City, but is for the equal advantage of Provo and Ogden, which, together with Salt Lake City, are known as Utah common points. Whenever in this opinion reference is made to Salt Lake City it will be understood that the three points are intended, unless the contrary expressly appears.

The rates put in issue are the following:

1. Class rates in both directions between Chicago, the Mississippi River, and the Missouri River, upon the one hand, and Salt Lake City upon the other.

2. Westbound commodity rates from the above-named eastern points of origin to Salt Lake City.

3. Eastbound rates on certain products of Utah to the Missouri River, the Mississippi River, and Chicago.

4. Rates on deciduous and citrus fruits from points of production in California to Salt Lake City.

5. Import rates upon certain commodities through Pacific coast ports to Salt Lake City.

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6. Passenger fares in both directions between Salt Lake City, Ogden, and Provo, upon the one hand, and Denver, Omaha, Los Angeles, San Francisco, and Portland, upon the other.

The above statement of the issues involved shows that sweeping reductions are asked by the complainant. It is well understood that if these reductions are made they must be accompanied by other reductions in other localities, all of which will involve serious diminution in the revenues of interested carriers. The two lines mainly involved in this case are the Union Pacific and the Denver & Rio Grande, and these companies have assumed the burden of this defense. They both claim that the reductions asked for would so impair their revenues as to work, if not the absolute confiscation of their property, against which the constitution protects them, at least such an impairment of income as would deprive them of a just and reasonable return upon the value of that property.

For the purpose of substantiating this claim a great mass of testimony and statements has been introduced, tending to show the original cost of the properties, the cost of their reproduction at the present time, and their value, together with the results of operation under present rates and the losses which would result from the reductions asked for.

The Union Pacific Company introduced a statement showing the cost of the property, year by year, from 1899 down to 1909, and the net earnings, after the payment of taxes, from the operation of the property during each of these years. From this it appeared that the average per cent of return for the eleven years upon the cost of the property was between six and seven. For the last four years the per cent of return has been—

Year.	Per cent.
1906	7.65
1907	8.04
1908	7.41
1909	8.66

This statement treats the lines of railroad of the Union Pacific Railroad Company, the Oregon Short Line Railroad Company, and the Oregon Railroad & Navigation Company, as a single property. The road interested in these rates between eastern destinations and Utah points is the Union Pacific. The last statistical report of that company to this Commission shows a main line mileage of 1,893 miles, with branches of 1,415 miles, a total of 3,308 miles. In round numbers its funded debt was \$226,000,000 and its capital stock \$299,000,000, a total of \$525,000,000, or \$159,000 per mile. In the year 1909 it paid its taxes, the interest upon its funded debt, a

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dividend of 4 per cent upon its preferred stock, a dividend of 10 per cent upon its common stock, and had remaining \$7,748,000.

The Union Pacific Company has issued large amounts of securities for investment purposes, and those investments have, in the main, proved fortunate, so that the income above referred to is not derived wholly from the operation of its property. But for this same year it earned net from operation, after the payment of taxes, \$22,816,000, or about \$6,900 per mile, for both main line and branches. These earnings exceed those of any group in the United States except group No. 2, which they nearly equal.

The Union Pacific Railroad between Omaha and Ogden is double tracked for a considerable portion of the distance. Its tonnage is large and its cost of operation low. In the year 1909 its per-ton-mile earnings were 1.004 cents and its per cent of operating expenses to gross income 48.52.

The financial showing of the Denver & Rio Grande is nothing like as favorable as that of the Union Pacific. This company introduced and placed great stress upon a statement showing its net income from operation for the years 1899 to 1909, inclusive, from which it appeared that for the years 1903, 1906, and 1909 there had been what was styled a "deficit," that for 1909 being much the largest and amounting to \$650,000. It was urged that to reduce these rates would further increase this so-called deficit.

The main line of the Denver & Rio Grande is 716 miles in length, and its branches, usually short, aggregate 1,813 miles. Its funded debt is now \$107,000,000, or \$42,479 per mile. Its capital stock is divided between common and preferred, \$38,000,000 of the former and \$46,000,000 of the latter, totaling \$33,127 per mile.

A portion of these securities seem to have been issued for investment purposes, since this company derives a considerable income from securities owned by it. The net result of its financial operations for the year 1909, that being the year of its largest deficit, was, according to its report filed with this Commission, as follows: It paid interest upon its funded debt, paid a dividend of 5 per cent upon its entire preferred stock, carried \$120,000 to sinking fund, charged to additions and betterments \$361,000, and had remaining \$286,000.

The Denver & Rio Grande is situated, for the most part, among the mountains. Its cost of construction was high, and the expense of operation is much greater than that of the Union Pacific. It is the claim of this company that we should determine the reasonableness of these rates with reference to the cost of handling the traffic by its line and with reference to its financial necessities and not with reference to the Union Pacific.

The Denver & Rio Grande was built for the purpose of handling the local business tributary to its line. No railroad would ever have

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been built where this one is for the main purpose of handling through business like that under consideration. To-day its branch lines aggregate two and one-half times the mileage of its main line, over which this traffic passes. The great bulk of its tonnage to-day is from local business. Its line is longer than that of the Union Pacific between all points.

The Commission has said that in determining a freight rate which must of necessity be charged by competing lines, it would not look exclusively to that line which could handle the business the cheapest or which was the strongest financially, but would consider as well the weaker rival. We have never intimated that the rate should be fixed solely with reference to the weakest line, and it would certainly be most unjust to the public, in establishing these rates, to consider merely this expensive and circuitous route. The Denver & Rio Grande handles about 40 per cent of this Utah business from the east at the present time. It will continue to handle a considerable part of it, and it must accept the rate established by us. This we must and do take into account in the fixing of that rate, but we must be largely influenced by the cost of handling that business over the short and easy line. While this traffic is important to the Denver & Rio Grande, its revenue from this source is but a small part of its entire income, and we certainly could not permit the maintenance of unreasonable rates simply because the entire result of the operations of this company might not be as favorable as would otherwise be proper.

Both defendants dwelt with much earnestness upon the effect of the increased cost of operation which must result from an increase in wages and in the price of materials.

It is well understood that in recent years there has been a continuous advance in the price of most materials and supplies used in constructing and operating a railroad, that there has been a constant tendency to advance wages, and that all this has tended to increase the cost of operation.

Upon the other hand, there has been a steady improvement in the method of handling freight; trains are longer; cars are larger and more heavily loaded; grades are easier; the amount hauled by a given engine is greater; the density of traffic is much greater. All this tends to reduce the expense of transportation.

These two sets of causes work in opposite directions and tend to balance one another. It is not certain what the net result has been at any time in the past or is to-day. It is not improbable that at the outset the economies of operation more than outweighed the increased cost of labor and supplies, but that of late the reverse has been true. The Union Pacific Company professed to show that the cost of handling a ton of freight per mile was slightly greater in 1909 than it had been in 1899.

The amount of tonnage handled has very much increased upon these defendant lines, in common with all other lines, during these eleven years. If the rate of transportation remains the same, and the cost of handling the business per ton-mile continues the same, plainly an increase in tonnage must produce a corresponding increase in net revenue, and the net revenues of the Union Pacific have very largely increased during this period. It is evident that the total result to net revenues from the operation of these conflicting causes can not be foretold with accuracy. It is perhaps probable that the effect of increased wages and increased cost of supplies will be more seriously felt in the future than it has been in the past.

We have examined with great care all the evidence and arguments adduced by the defendants bearing upon these matters; the value of their properties, the cost of operation, the financial results from operation. Our conclusion is here, as in case of the Great Northern and Northern Pacific in the *Spokane case*, 19 I. C. C. Rep. 162, that there is nothing to justify the maintenance of abnormal rates. Rates of transportation may properly be somewhat higher west of the Missouri River than east, but there is no reason why such rates upon the lines of the Union Pacific between the Missouri River and Utah points should greatly exceed similar rates upon railroads in other portions of the country, where the density of traffic and the conditions of operation are analogous. The rates involved in this proceeding may well be adjusted upon substantially the same basis as was applied in case of the northern lines to Spokane.

With these general observations, we proceed to consider the several rates involved.

I.

The complaint attacks class rates in both directions between Chicago, Mississippi River, and Missouri River rate territories, upon the one hand, and Utah points, upon the other.

Below is a table showing present westbound class rates from the points of origin named to Salt Lake City, the rates prayed for in the complaint, and the difference between the two.

Class rates, in cents per 100 pounds.

	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Chicago:										
Rates in effect.....	285	240	198	180	133	138	110	97	69	58
Rates prayed for.....	196	170	144	124	108	105	82	65	65	58
Difference.....	89	70	54	56	25	33	28	32	4	0
Mississippi River:										
Rates in effect.....	265	220	188	155	128	129½	102½	92	64	53
Rates prayed for.....	190	164	139	129	104	101	79	63	63	53
Difference.....	75	56	49	35	24	28½	23½	29	1	0
Missouri River:										
Rates in effect.....	205	175	153	128	106	106	83	75	50½	42
Rates prayed for.....	168	146	123	106	92	90	70	56	50½	42
Difference.....	37	29	30	22	14	16	13	19	0	0

Eastbound and westbound rates between these points are usually the same at the present time, and it was agreed by both parties that there was no reason why they should not be the same in all cases.

After full hearing and due consideration, we are of the opinion that the class rates given below are just and reasonable rates to apply between these points in both directions, and that the rates now in effect are unjust and unreasonable to the extent that they exceed those named:

Class rates, in cents per 100 pounds.

Classes.	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Chicago.....	245	207	172	139	115	115	95	84	62	52
Mississippi River.....	227	189	163	134	111	111	88	80	57	48
Missouri River.....	190	162	142	119	98	98	77	70	50	42

II.

The complaint attacks commodity rates from Chicago, the Mississippi River, and the Missouri River, to Utah points. The commodities upon which the rates complained of apply, together with the present rate, and the rate asked for, are set forth in detail in the complaint.

The Commission has prepared a schedule marked "X," hereto attached, naming rates on certain of these commodities from these originating territories to Salt Lake City, Ogden, and Provo, which, in its opinion, are just and reasonable rates to be applied to the transportation of those commodities, with the carload minimums which are specified, when the rate is by the carload. We are of the opinion that the present rates upon those commodities are unjust and unreasonable in so far as they exceed the rates named in this schedule.

III.

The complaint puts in issue eastbound rates upon certain commodities named in statement B attached to the complaint.

These commodities are 14 in number. They are all, with the possible exception of petroleum oils and greases, produced in Utah, usually in considerable quantities. No testimony was given as to specific rates, but the general claim is that the rates in effect from Utah points are unreasonable as compared with those from Pacific coast terminals.

These same commodities are also produced in California and other coast states. The terminal rates generally apply as blanket rates to the Missouri River and territory east. Rates from Utah are sometimes the same to the Missouri River and to Chicago, while in other cases they increase as the distance increases. Upon most of the

commodities the rate from Utah to Chicago does not exceed that from the Pacific coast terminal to Chicago.

The rate on catsup, in tin, glass, or earthenware, boxed, minimum 40,000 pounds, is 85 cents from coast terminals to the Missouri River and east. From Salt Lake City the rate is \$1.28 to the Mississippi River, and \$1.33 to Chicago, minimum 36,000 pounds. We are of the opinion that the present rates to the Mississippi River and Chicago are unreasonable, and that those rates ought not to exceed 85 cents, with a minimum of 40,000 pounds.

In case of hides, green and dried, sheep pelts, tallow, and wool, rates from the coast terminals to the Missouri River and east are lower than those from Utah points to Chicago, and sometimes lower than those from Utah points to the Missouri River. These articles are moved in large quantities not only from Utah, but from other states and territories in this same general locality. At the present time the Commission has before it rates upon these commodities from other points of origin in several complaints. There is no testimony in this record from which a satisfactory conclusion could be reached. It may, however, seem advisable to make such inquiry hereafter in this and other cases as will enable us to establish just and consistent rates for the movement of these articles, and in this view these rates will be reserved for future consideration.

IV.

The complainant attacks rates on citrus and deciduous fruits from California points of production to Utah points. When the complaint was filed the rate on oranges was \$1.15, on lemons \$1. To-day the rate upon both commodities is \$1.15, and that is also the rate applicable to most deciduous fruits and vegetables.

Rates upon citrus fruits from California to eastern destinations have been several times before the Commission, and their history is well understood. When the orange industry first began to develop in California competition was encountered both from Florida groves and from foreign production, and this competition in both cases was most active upon the Atlantic seaboard. In view of these competitive conditions the same rate was made to New York as to more westerly points, and this finally resulted in applying a blanket rate from the Missouri River and all points east, which was later extended westward to Colorado points. For many years this rate was \$1.25, but in 1904 it was reduced to \$1 on lemons and in 1907 to \$1.15 upon oranges.

While the blanket rate of \$1.25 was in force the rate to Utah points was \$1.12½, but when the blanket rate was reduced to \$1.15 the Utah rate was advanced to the same figure, so that to-day the blanket extends from Salt Lake City to the Atlantic seaboard. The com-

plainant insists that the rate to Salt Lake City is inherently unreasonable.

This Commission has often approved blanket rates. It undoubtedly should, in so far as it consistently can, approve this rate upon citrus and deciduous fruits from California. That feature of the rate is highly satisfactory to the grower and brings this article into more general use at remote points than would otherwise be possible. In passing upon the reasonableness of the blanket rate we must undoubtedly offset the rate to the nearer point against that to the more distant point. But where the application of such a rate clearly results in imposing unjust and unreasonable transportation charges at the nearer point this fact can not be ignored or excused simply because a rate less than is just is granted at the more distant points.

It is something less than 800 miles by the San Pedro, Los Angeles & Salt Lake Railroad from southern California to Utah; via the Southern Pacific to Sacramento and east it would be some 350 miles farther. From most deciduous fruit-producing points in California and from the orange groves in central California the distance to Salt Lake City does not exceed from 700 to 800 miles. Upon no theory can we sanction a rate of \$1.15 per 100 pounds for these distances. We are of the opinion that the present rate of \$1.15 upon citrus and deciduous fruits from producing points in California to Utah points is unreasonable, and that this rate should not exceed \$1 per 100 pounds, for the future, the minimum to be that contemporaneously applied to eastern destinations.

V.

The complainant asks that certain proportional import rates upon Asiatic business moving through Pacific coast ports be established to Utah points, and these rates are specified in statement D attached to the complaint.

It is well understood that these import rates via the Pacific coast are made in competition with the Suez Canal. The rates complained of are in all cases blanket rates applying to the Missouri River and territory east. There are but nine of these commodities—antimony ware, baskets, brushes, camphor, earthenware, gums, rugs, sago, and tea. Upon the first seven of these there are at the present time no rates to Utah points. Upon the last two, rates are named which are slightly higher than those to eastern territory; thus the less-than-carload and carload rates on sago to eastern territory are \$1.25 and 80 cents, as compared with \$1.31 and 96 cents to Utah points, and, upon tea, \$1.25 and \$1, as against \$1.50 and \$1 to Utah points.

We are of the opinion that the defendants should establish to Utah points import rates upon the articles above named which do not exceed those contemporaneously in force to the Missouri River, and

that the present rates upon sago and tapioca and tea and tea dust are unreasonable to the extent that they exceed those now in effect to Missouri River points.

VI.

The complainant assails first class one-way passenger fares in both directions, between Salt Lake City, Ogden, and Provo, upon the one hand, and Denver, Omaha, Portland, San Francisco, and Los Angeles, upon the other.

Fares from Provo, Salt Lake City, and Ogden to Denver and Omaha are the same for the following reason. The Denver & Rio Grande begins at Ogden and runs south through Salt Lake City and Provo. Whatever rate is made by the Union Pacific from Ogden to Denver must be met by the Denver & Rio Grande, which applies the same rate at Salt Lake City and Provo. The Union Pacific, beginning at Provo upon the south, runs north through Salt Lake City and Ogden to Denver and Omaha. It must meet at Provo and Salt Lake City the rate fixed by the Denver & Rio Grande, which, in turn, is the rate established by the Union Pacific itself from Ogden.

The present rate from all these points to Denver and Omaha is obtained by applying a 3-cent mileage scale to the actual distance via the Union Pacific from Ogden, that being in all cases the short-line distance. If the 3-cent scale is reasonable, then these rates are not excessive.

Not long ago rates upon the Union Pacific lines, including the Oregon Short Line and the Oregon Railroad & Navigation Company, were often as high as 4 cents per mile. They were reduced first to $3\frac{1}{2}$ cents and subsequently, some three or four years ago, to a uniform basis of 3 cents per mile, at which figure they are now maintained upon the entire main line of the system.

An examination of the local rates of the Great Northern and the Northern Pacific shows that those of the Great Northern are just about 3 cents per mile and those of the Northern Pacific a trifle less. The local rates of the Denver and Rio Grande are nearly 4 cents per mile. The average passenger receipts of that company are only 2 cents per mile, but a large part of its passenger business is handled under competitive rates, which, over its long line, yield a reduced mileage rate.

The 3-cent fares of the Union Pacific are fairly in line with the rates charged by other railroads in this territory. The real question is whether the passenger fares upon all these lines are excessive.

The defendants urge that passenger fares may properly be high in this part of the country because population is sparse; but this is hardly the controlling inquiry. The question is rather how much passenger business do these lines handle and under what conditions

do they handle it. It makes no difference so far as the rate is concerned whether the business originates at Omaha and east or whether it originates at numerous local stations. Indeed, the through business, which is necessarily long-haul business, is more desirable and can be carried at lower rates than strictly local business.

Below is a table showing, for the year ending June 30, 1909, in case of the railroads named, and for the year ending June 30, 1908, in case of the groups and the general average for the whole United States, the passenger earnings per mile of road, the passenger earnings per train-mile, and the number of passengers per train mile. The year 1908 has been selected in case of the groups and the whole United States because these figures are not yet available for the year 1909.

	Passenger earnings.		Passengers per train-mile.
	Per mile of road.	Per train-mile.	
Southern Pacific.....	\$5,367.10	\$1.927	73
Union Pacific.....	3,956.19	1.600	61
Oregon Short Line.....	3,388.27	2.032	69
Oregon Railroad & Navigation.....	3,081.30	2.141	72
Illinois Central.....	3,057.77	1.128	48
Michigan Central.....	4,524.13	1.311	54
Wabash Railroad.....	3,221.62	1.137	80
Baltimore & Ohio.....	4,018.70	1.079	66
Chicago & Alton.....	4,021.94	1.332	61
Chicago, Burlington & Quincy.....	2,720.66	1.447	63
Chicago, Milwaukee & St. Paul.....	2,189.62	1.192	48
Chicago & North Western.....	2,753.88	1.137	80
Group I.....	6,984.00	1.411	71
Group II.....	6,267.00	1.271	62
Group III.....	3,451.00	1.165	48
Group IV.....	2,113.00	1.135	45
Group V.....	2,096.00	1.124	39
Group VI.....	2,643.00	1.157	49
Group VII.....	2,623.00	1.604	62
Group VIII.....	2,049.00	1.195	47
Group IX.....	1,792.00	1.362	68
Group X.....	3,572.00	1.856	89
Average for all railroads in United States.....	3,043.00	1.270	54

An examination of the above table discloses that the earnings per mile of road from passenger traffic upon the Union Pacific are very much larger than those of the Chicago & North Western, Chicago, Milwaukee & St. Paul, Chicago, Burlington & Quincy; somewhat in excess of the Wabash and the Illinois Central, and only slightly less than the Baltimore & Ohio, the Chicago & Alton, and the Michigan Central; that they exceed the average of the several groups in the United States except Groups I and II, and that they also exceed the average for all the railroads in the United States.

An important inquiry is as to the conditions under which this business is handled. Are the passenger trains well loaded, or do they run light?

It appears from the above table that the earnings per train-mile upon the Union Pacific, the Oregon Short Line, and the Oregon Rail-

road and Navigation Company exceed those of all the other railroads named, save only the Southern Pacific, and that the number of passengers carried per train-mile is usually greater than upon other lines.

The above figures strongly suggest that the present 3-cent fare upon the Union Pacific lines might be somewhat reduced, but we are not prepared upon the present investigation, to which these passenger rates are rather incidental, to so hold.

From this it follows that the complaint against the present passenger fare between these Utah points and Ogden and Omaha is not sustained. And this is also true of the rate to Portland, which from Salt Lake City is \$27 for a distance of 945 miles—about 2.86 cents per mile.

The short line from Salt Lake City to Los Angeles is at the present time via the San Pedro, Los Angeles & Salt Lake Railroad, the distance being 781 miles. The present first class rate of that company is \$30, yielding over 3½ cents per mile. The complainant insists that it ought not to charge in excess of 2½ cents per mile.

This road is comparatively new. As with most railroads built in that country, serious engineering difficulties were encountered in its construction, and up to the present time it has been unfortunate in its operation. For each of the past three seasons it has sustained damage so serious as to interrupt for a time the entire operation of the road. The showing made by its passenger business is not a bad one. For the year ending June 30, 1909, its passenger receipts per mile of road were \$2,602. It averaged to carry 57 passengers to the train and its average earnings per train-mile were \$1.54.

It is alleged in its behalf that many special excursion rates of various kinds are established, so that, in point of fact, the passenger between Salt Lake City and Los Angeles seldom pays \$30. This is undoubtedly true, but it seems to us that when a passenger is obliged to pay this rate, an unjust charge is levied. Under all the circumstances we are of the opinion that the fare between Salt Lake City and Provo on the one hand and Los Angeles on the other should not exceed \$25, and that between Ogden and Los Angeles the maximum should be \$26.10.

The last passenger fare in issue is that from Ogden to San Francisco. The fare is \$30, and the distance 787 miles, yielding about 3½ cents per mile.

It will be seen from the table already referred to that the Southern Pacific, in all the elements which should make for a low passenger rate, surpasses most railroad systems in the United States. In our opinion, the first class passenger fares between these points should not exceed the following:

Ogden and San Francisco.....	\$23.58
Salt Lake City and San Francisco	24.69
Provo and San Francisco.....	26.04

The complaint alleges that the defendants are pooling traffic from the east to Utah points; but the record contains no proof of this allegation, and the point was not pressed upon the argument.

An order will be issued in accordance with the foregoing opinion, except in case of class and commodity rates between eastern defined territories and Utah points. With respect to these rates, no order will at present be made, but the defendants will be required to furnish an accurate account for the months of July, August, and September, 1910, or for such other representative months as may be determined upon by the Commission after conference with the defendants, showing the difference between the receipts upon traffic actually moved under present rates and what those receipts would have been on the same traffic had these proposed rates been in effect. Carriers may also indicate any changes in other rates which would, in their opinion be necessitated by the putting in of the rates established by this opinion, and may show the reduction in revenue so occasioned; but the changes should be definitely indicated, and the loss of revenue due to other reductions should be kept entirely distinct from that due to the rates here specified.

Either party may, on or before August 15, 1910, file with the Commission any objection to the rates here found reasonable, but not now made the subject of an order. If, upon an examination of the objections so filed, it seems proper, the parties will be allowed, during the month of September, to present testimony to the Commission and will be further heard in that behalf.

Carriers should at once begin the preparation of schedules, so that these may be ready for filing not later than November 1.

SCHEDULE X.

SHOWING COMMODITY RATES IN CENTS PER 100 POUNDS FROM
DEFINED EASTERN TERRITORIES TO SALT LAKE CITY, OGDEN,
AND PROVO, IN THE STATE OF UTAH.

The territories used in this schedule in naming rates to Utah points, are the following:

Territory No. 1: Missouri River and common points, designated "Missouri River."

Territory No. 2: Mississippi River and common points, designated "Mississippi River."

Territory No. 3: Chicago and common points, designated "Chicago."

The above territorial groups are particularly defined in Joint Freight Tariff Trans-Missouri No. 20-E, I. C. C. No. 207, effective March 25, 1908, which description is here referred to.

19 I. C. C. Rep.

Subject to Western Classification No. 48 (Agent F. O. Becker's I. C. C. No. 6), supplements thereto and reissues thereof.]

Articles.	From Chi- cago.	From Missis- sippi River.	From Mis- souri River.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Agricultural implements, viz: Reapers, mowers, headers, mower-knife grinders, harvesters, hay tedders, hayracks and extra parts for same, straight or mixed carloads, minimum carload weight 24,000 pounds.....	115	110	29
Agricultural implements, hand, viz: Forks, barley (wooden); forks, hay or manure, forks, spading; hoes, potato hooks, rakes (wooden or iron), scythes, and snaths, in packages, minimum carload weight 24,000 pounds.....	125	120	100
Potato sorters, minimum carload weight 24,000 pounds.....	135	130	108
Shovels, spades, and scoops, in packages, minimum carload weight 24,000 pounds.....	135	130	108
Arsenate of lead, in packages, minimum carload weight 40,000 pounds.....	85	82	68
Asbestos, n. o. s.: Asbestos roofing slate, asbestos building paper and felt; asbestos, magnesia cork, hair felt, and mineral wool, boiler and pipe covering and cork insulation used in the construction of cold storage plants, and similar material for same purposes, in bundles, bags, crates, or cases, minimum carload weight 24,000 pounds.....	100	96	88
Babbitt metal, minimum carload weight 40,000 pounds.....	100	96	88
Bags and bagging, burlap, gunny, hemp or jute, not colored artificially nor figured, painted or printed, nor backed with paper or sizing, compressed in bales, minimum carload weight 30,000 pounds.....	85	82	68
Bags, cotton, in bales or trusses, minimum carload weight 30,000 pounds.....	125	120	100
Bags, sugar (burlap, cotton lined), minimum carload weight 30,000 pounds.....	90	86	72
Baking powders, and baking powder compound, boxed, minimum carload weight 30,000 pounds.....	120	115	96
Bath tubs, seamless steel (enameled), minimum carload weight 24,000 pounds.....	150	144	120
Bath tubs, water-closet bowls, cisterns, urinals, washbowls (including stands, k. d.), and stationary wash tubs, cast-iron or seamless steel, plain painted, galvanized, granite-lined, or porcelain-lined, boxed or crated, minimum carload weight 24,000 pounds.....	160	154	128
Bath tubs, cast iron, plain, painted, galvanized, granite-lined, porcelain-lined, straight carloads, minimum carload weight 24,000 pounds.....	150	144	120
Beans and peas, dried, split or whole, in sacks or barrels, minimum carload weight 40,000 pounds.....	75	72	60
Beltting, leather, minimum carload weight 30,000 pounds.....	120	115	96
Bicycles (complete or stripped, with or without the stripped parts), boxed or crated, minimum carload weight 10,000 pounds.....	250	240	200
Billiard tables (including toy billiard tables) k. d., including slates or marbles, cues, cue racks, ball racks, composition pool or billiard balls, composition shake balls (small balls used in bottles), shake bottles, pin-pool boards, billiard marker buttons, billiard bridges, billiard cue tips, billiard chalk and billiard table covers (rubber), minimum carload weight 24,000 pounds.....	145	139	116
Books, blank, including school composition books, blank books and tablets for school purposes in paper covers, boxed, minimum carload weight 30,000 pounds.....	125	120	100
Books, scrap and stub file, boxed, minimum carload weight 30,000 pounds.....	125	120	100
Books, n. o. s., minimum carload weight 30,000 pounds.....	140	134	112
Bottles, siphon, confectionary and tobacco, and druggist and museum bottles or jars, of capacity of 1 gallon or less, in boxes or cases, minimum carload weight 24,000 pounds.....	125	120	100
Bottles, wine or beer, and whisky or brandy bottles of similar shape, common flint green, black or amber (not including druggists' prescription bottles and bottles of similar shape, or flasks, any style finish); common soda-water bottles (not siphon), in bulk, or in boxes, cases or crates, minimum carload weight 30,000 pounds.....	75	72	60
Bottles, wine or beer, and whisky or brandy, bottles of similar shape, common flint, green, black or amber; common soda-water bottles (not siphon); in boxes, cases or crates, minimum carload weight 30,000 pounds.....	75	72	60
Boxes, paper, pasteboard or fiberboard, minimum carload weight 24,000 pounds.....	125	120	100
Boxes, paper or pasteboard (including paraffined pasteboard boxes), k. d., flat; also folding egg carriers (folded flat), and egg trays (nested), in boxes, crates, or bundles, minimum carload weight 30,000 pounds.....	125	120	100
Brass goods, not silver plated; butts, bolts, castings, faucets, n. o. s., pipe bends and traps, pipe connections (n. o. s.), hinges, moldings, nails, rivets, tacks, blanks, screws, corners for picture frames, and door rails, boxed, minimum carload weight 30,000 pounds.....	180	144	120
Broom corn (in 26-foot cars), minimum carload weight 14,000 pounds.....	125	120	100
Candles and wax tapers, minimum carload weight 30,000 pounds.....	100	96	80
Canned goods, viz, fish, fruits (not preserves), meats (including potted or deviled), olives, vegetables, catsup, kraut, baked macaroni and cheese, soups, breads and pudding in tin, glass or earthenware packages hermetically sealed, boxed, minimum carload weight 40,000 pounds.....	90	86	72
Canned corn, boxed, minimum carload weight 40,000 pounds.....	90	86	72
Canned fish, canned clam juice, and canned clam chowder, boxed, minimum carload weight 40,000 pounds.....	85	82	68
Canned meats or meats in glass, hermetically sealed (including potted or deviled) boxed, straight or mixed carloads, minimum carload weight 40,000 pounds.....	85	82	68
Canned beans and canned peas, boxed, minimum carload weight 40,000 pounds.....	85	82	68
Cans, tin (including tin boxes, tin lard cans, tin lard pails and milk cans), in packages or bulk, minimum carload weight 20,000 pounds.....	85	82	68

• This rate will apply on "pork and beans."

Articles.	From Chi- cago.	From Missis- sippi River.	From Mis- souri River.
Carpets, n. o. s., including art carpet (heavy burlap stamped with paint similar to oilcloth); rugs (invoice value not exceeding \$100 each) and mats, minimum carload weight 24,000 pounds.	<i>Cents.</i> 185	<i>Cents.</i> 178	<i>Cents.</i> 148
Carpet lining, in rolls or compressed in bales, minimum carload weight 24,000 pounds.	110	106	88
Cartridges (metallic or paper for small arms only), loaded, if so marked on outside of packages, minimum carload weight 30,000 pounds.	125	120	100
Cereals and cereal preparations, viz.: Flour (wheat, rye or buckwheat), in packages, minimum carload weight 50,000 pounds.	70	67	56
Chimneys and lantern globes, glass, in boxes, barrels, or crates; also glass lamp chimneys packed in double-faced corrugated pasteboard boxes, minimum carload weight 16,000 pounds.	150	144	120
Clothespins, boxed, minimum carload weight 24,000 pounds.	100	96	80
Clothes wringers, and parts thereof (including combination wash bench and clothes wringers), mop wringers, and hand mangles, boxed or crated, minimum carload weight 30,000 pounds.	125	120	100
Clothing, viz: Merino and cotton knit underwear, cardigan jackets (cotton or woolen), and sweaters (cotton or woolen), in bales or in cases, cotton merino and woolen hosiery, cotton knit ribbing, and cotton knit wristbands, boxed, minimum carload weight 30,000 pounds.	150	144	120
Cocoa and chocolate, in boxes, minimum carload weight 30,000 pounds.	125	120	100
Cocoa beans, straight carloads, minimum carload weight 30,000 pounds.	85	82	69
Coffee, green, in sacks, minimum carload weight 30,000 pounds.	75	72	60
Coffee (including cereal coffee), roasted or ground, in boxes, barrels, or drums, minimum carload weight 30,000 pounds.	90	86	72
Cotton waste, in bales, machine compressed, minimum carload weight 24,000 pounds.	110	106	88
Cranberries, in packages, minimum carload weight 24,000 pounds.	160	154	128
Creamery and cheese-factory machinery, minimum carload weight 24,000 pounds.	150	144	120
Crucibles and retorts, n. o. s., minimum carload weight 30,000 pounds.	100	96	80
Dressing, harness, shoe or belt, and shoe and furrier's blacking, liquid or paste, in glass or stone, boxed or in barrels, minimum carload weight 30,000 pounds.	110	106	88
Drugs, medicines, and chemicals, nitrate of ammonia, medicinal oils, witch hazel, medicinal and flavoring extracts, and dyestuffs, n. o. s., in packages, minimum carload weight 24,000 pounds.	*150	*144	*120
Medicinal and surgical plaster, surgical dressings, and absorbent cotton, boxed, minimum carload weight 24,000 pounds.	150	144	120
Dry goods: Blankets, horse; burlap, duck, and shoddy, any quantity.	156	150	125
Any of the following articles made wholly of cotton, viz: Calicoes, cambrics, glazed, flat (not including tracing cloth), canton or cotton flannels, cottonades, cotton corduroy, cotton or shoddy blankets, shoddy blanketing, cotton crash, cotton prints, cotton damask (n. o. s., not including upholstering damask), cotton jeans, cotton bunting, cotton dress linings, cotton dress goods of domestic manufacture in the original piece, cotton yarn, buckram, cotton shirtings, canvas (not embroidered), domestic checks, stripes, and chevrons, domestic ginghams, silses, ticking, and serims, cotton sheets and pillow cases, any quantity.	156	150	125
Cotton piece goods: Cotton fabrics (made wholly of cotton) in the original piece (but not finished articles ready for immediate use), packed in rolls, covered with burlap, or in boxes or bales, cotton shoddy lining, cotton warp, cotton yarn, shade cloth and window hollandes, plain uncut and undecorated, in bales, any quantity.	156	150	125
Cotton duck and denim, minimum carload weight 30,000 pounds.	110	106	88
Cotton drills, cotton sheetings, and cotton bagging, bleached or unbleached, minimum carload weight 30,000 pounds.	110	106	88
Earthenware, stoneware, and crockery, in boxes, barrels, casks, tierces, crates, or hogheads, minimum carload weight 24,000 pounds.	90	86	72
Earthenware, plumber's, viz: Washbowls, water-closet bowls, and urinals, minimum carload weight 24,000 pounds.	140	134	112
Food, poultry, viz: Ground meat and bone, alfalfa meal, blood meal, gluten meal, clover meal, gluten feed, cut alfalfa, cut clover, grain screenings, millet seed, crushed shells, and charcoal, in packages, minimum carload weight 30,000 pounds.	60	58	48
Freezers, ice-cream (hand or machine), and ice-cream freezer tube, minimum carload weight 24,000 pounds.	150	144	120
Fruit boxes or baskets, wooden, nested, in packages, minimum carload weight 24,000 pounds.	100	96	80
Furniture, net cost of each piece enumerated not to exceed the following, viz: Bedsteads or folding beds (wooden), value \$14 each, bureaus \$20 each, chiffoniers \$20 each, small tables (not including extension tables) \$6 each, washstands \$6 each, straight or mixed carloads, minimum carload weight 30,000 pounds.	125	120	100
Furniture, viz: Mattresses and frames, metallic, wire cots, wooden folding cribs with woven wire bottoms (k. d. or folded flat), wire and spring beds and bottoms, and canvas cots, not upholstered, in packages, less than carload.	200	192	160
Table slides, in packages, minimum carload weight 40,000 pounds.	100	96	80

* Does not include nitric, muriatic, and sulphuric acids, phosphorus, opium, nor toilet articles, except tooth washes, tooth paste, and tooth and toilet powders.

Articles.	From Chi- cago.	From Missis- sippi River.	From Mis- souri River.
Furniture—Continued.			
Bedsteads (iron), folding beds (iron), cribs (iron), institution beds (iron), k. d. metallic couch frames, k. d., or metallic folding couches (folded), plain or with brass trimmings, metallic mattresses and spring beds (compressed), wire cots, wooden folding cribs with woven wire bottoms (k. d. or folded flat), wire and spring beds and bottoms and canvas cots (not upholstered), minimum carload weight 24,000 pounds.	Cents. 115	Cents. 110	Cents. 92
Camp furniture, folded flat, consisting of canvas cots, canvas seat chairs, canvas seat stools, and camp tables, minimum carload weight 30,000 pounds.	150	144	120
Church pews, k. d., in packages or bundles, minimum carload weight 20,000 pounds.	150	144	120
Glass, window, common, boxed, minimum carload weight 30,000 pounds.	90	86	72
Glassware, (except cut) n. o. s. (in boxes or barrels), and glass lamps, plain, in no way ornamented or decorated (in boxes, barrels, or casks); fruit or jelly glasses (value not to exceed 25 cents per dozen) and tops and top fastenings for same, in boxes or barrels; patch boxes (in boxes or barrels), also opal glassware, not metal trimmed (in boxes, barrels, or casks), minimum carload weight 24,000 pounds.	120	115	96
Glucose, in barrels, in straight carloads, minimum carload weight 30,000 pounds.	65	62	52
Glue, in boxes, barrels, or bags, minimum carload weight 30,000 pounds.	85	82	68
Grease, axle (not machine lubricant), including mineral or petroleum axle grease, in packages, minimum carload weight 30,000 pounds.	90	86	72
Grindstones (and frames) mounted or unmounted, minimum carload weight 30,000 pounds.	80	77	64
Hames, wooden, in boxes, crates, or bundles, minimum carload weight 30,000 pounds.	100	96	80
Handles, wooden, in boxes, crates, or bundles, as follows: Axe, adze, pick, sledge, hatchet, hammer, mallet, fork, hoe, rake, shovel and peavy, minimum carload weight 30,000 pounds.	115	110	92
Handles, wooden, in boxes, crates, or bundles, as follows: Mop with or without metal fixtures attached, but without heads, and plow, rough, handles, wooden, in the white, minimum carload weight 30,000 pounds.	115	110	92
Handles, viz: Mop handles, without metal fixtures attached, minimum carload weight 40,000 pounds.	85	82	68
Hardware articles: Chain, trace, and hobble, minimum carload weight 30,000 pounds.	85	82	68
Hardware, viz:			
Adzes, with or without handles, boxed; axes, with or without handles, boxed; and axes, with handles, handles exposed and blades boxed or crated, minimum carload weight 30,000 pounds.	125	120	100
Hangers, rollers, and rail, barn-door; hangers, parlor-door (including tracks for same), minimum carload weight 30,000 pounds.	110	106	88
Rail or track (iron) door, minimum carload weight, 30,000 pounds.	85	82	68
Knobs for furniture, locks, and pictures, in packages, locks in packages, each fasteners in packages, minimum carload weight 30,000 pounds.	125	120	100
Vises, iron, minimum carload weight 30,000 pounds.	110	106	88
Hollow ware of cast iron only, plain or enameled, as follows: Pots, kettles, skillets, spiders, Scotch bowls, long pans, sad-iron heaters, griddles, waffle irons, broilers, caldron kettles, sugar kettles, pitch pots, bake ovens, sauce pans, broilers, gem pans, tea kettles, and hoppers (slop); also the following stove furniture: Blowers, cover lifters, poker, scrapers, shakers, dampers, stove shovels, and tongs, minimum carload weight 24,000 pounds.	120	115	96
Hose, rubber (with or without covering), in cases, crates, or bales, minimum carload weight 30,000 pounds.	125	120	100
Incubators and brooders, minimum carload weight 24,000 pounds.	135	130	108
Ink, in glass, stone, or paper bottles, boxed, or in tin cans, boxed or in wood; muckage, in boxes, barrels, or kegs, and stationers' paste (not confectioners' paste), straight or mixed carloads, minimum carload weight 30,000 pounds.	90	86	72
Insulators, terra cotta, clay, glass, or porcelain, including insulators (similar to conduits), for use in buildings for protection against fire; also telegraph pins and brackets, in boxes, barrels, crates, or hogheads, minimum carload weight 30,000 pounds.	90	86	72
Iron and steel, articles of, viz:			
Bridge, wharf, gas house, and structural iron and steel, fabricated or unfabricated, consist of: angle, channel, beams, columns, trusses, circular frames, girders, piling, braces, bridge railing, floor plates (corrugated), riveted and cast shoes; tubing, pier, bars (with head, eye, or screw threads); rods (with head, eye, or screw threads); pulleys, (tank or reservoir); weights, sees, tees, rails, joist hangers, post caps and bases; plate (No. 11 and heavier), punched or unpunched, bent or not bent; truss bars and corrugated bars for reinforcing concrete construction; sidewalk and floor plates (without glass); rivets (not less than one-half inch in diameter); washers; anchor rods (for telegraph or telephone poles), minimum carload weight 30,000 pounds for each car used.	80	77	64
Anvils, or anvils and vises combined, minimum carload weight 30,000 pounds.	90	86	72
Boiler, plate and sheet iron, No. 11 and heavier (black or galvanized), not bent, including boiler heads and ends, flat, unflanged, minimum carload weight 40,000 pounds.	80	77	64
Boilers, plate and sheet, n. o. s., Nos. 11 to 16, both inclusive (black or galvanized), not bent or punched, minimum carload weight 40,000 pounds.	81	78	66

*Does not include brass or other trimmings or knobs for bedsteads in any form.

Articles.	From Chi- cago.	From Missi- ssippi River.	From Mis- souri River.
Iron and steel, articles of—Continued.			
Bolts, nuts, washers, nutlocks, rivets, lag bolts and lag screws, minimum carload weight 30,000 pounds.	Cents. 80	Cents. 77	Cents. 64
Butts and hinges (except spring), in boxes, kegs, barrels, or casks, minimum carload weight 30,000 pounds.	85	82	68
Billets, blooms, ingots, muck bar and scrap steel, minimum carload weight 60,000 pounds.	60	58	48
Castings, car seat, carriage, wagon, sleigh, agricultural implement, furniture, hose, plow, school desk and step-ladder, in boxes, barrels, or crates, minimum carload weight 30,000 pounds.	115	110	92
Chain, n. o. s., minimum carload weight 40,000 pounds.	75	72	60
Clevises, in boxes or barrels, minimum carload weight 30,000 pounds.	80	77	64
Fence, K. D., in crates or bundles (including, if desired, iron gates and wrought-iron fence posts), and fence picket tips (in boxes, barrels, or casks), minimum carload weight 24,000 pounds.	100	96	80
Fire plugs, fire hydrants, and water gates, in mixed carloads, minimum carload weight 30,000 pounds.	100	96	80
Hasps, hooks, hoop keeps, staples, links, connecting links (not link belting), lap links, and cold shuts, in boxes, kegs, or barrels, minimum carload weight 30,000 pounds.	85	82	68
Hinges, spring, boxed, minimum carload weight 30,000 pounds.	110	106	88
Iron work, consisting of architectural iron work, viz: Door, window, and skylight frames, and bronzed architectural iron facings and fronts, minimum carload weight 30,000 pounds.	125	120	100
Lathing, wire (woven), corrugated, perforated or expanded, expanded metal flooring, metal concrete reinforcement, n. o. s., iron studding and corner beads, in boxes, crates, or bundles, minimum carload weight 30,000 pounds.	100	96	80
Pig, minimum carload weight 60,000 pounds.	40	38	32
Pipe fittings and connections, including cleanout fittings, cocks, or valves, wrought, cast, or malleable, or iron body cocks, valves and pipe connections (the bodies and principal parts of which are iron, but having brass pieces or parts) screwed, flanged or with hub ends; also wrought-iron pipe bends, with or without wrought or cast-iron flanges, minimum carload weight 30,000 pounds.	65	62	52
Pipe, cast-iron, and cast-iron connections for same, minimum carload weight 40,000 pounds.	60	58	48
Pipe, wrought-iron or steel welded, seamless, or lock bar (including boiler flues not over 12 inches in diameter), minimum carload weight 40,000 pounds.	60	58	48
Shafting, plain, without connections, minimum carload weight 40,000 pounds.	80	77	64
Sheet, planished or polished sheet steel (imitation planished) in packages, minimum carload weight 30,000 pounds.	100	96	80
Shingle bands, iron or wire, in packages, minimum carload weight 40,000 pounds.	70	67	56
Shoes, horse, mule, and ox, including toe calks, in boxes or kegs, minimum carload weight 40,000 pounds.	70	67	56
Ties, baling, in packages, minimum carload weight 40,000 pounds.	70	67	56
Tubing, open-seam (not bent), n. o. s., minimum carload weight 30,000 pounds.	60	58	48
Lanterns (not including magic, paper, or toy lanterns), in boxes, barrels, casks, or crates, minimum carload weight 20,000 pounds.	120	115	96
Lawn mowers, hand, with or without grass catchers, boxed or crated, minimum carload weight 24,000 pounds.	115	110	92
Lead, bar, pig, sheet, or pipe, minimum carload weight 40,000 pounds.	75	72	60
Leather, in boxes or rolls, of the following kinds: Bellies, belting butts, collar, heads, pieces, harness, rough, scrap (in sacks), tufts (in sacks), seal, skirting, sole, splits, tanned goat skins (without hair), tanned sheep skins (without wool), walrus, any quantity.	140	134	112
Leather, sole, minimum carload weight 30,000 pounds.	125	120	100
Liquors, as follows:			
Alcohol (including wood alcohol), and high wines, in bulk, in barrels, or drums, minimum carload weight 24,000 pounds.	90	86	72
Alcohol (including wood alcohol), and high wines, in tank cars, minimum capacity of tank, minimum carload weight 30,000 pounds.	100	96	80
Lye (concentrated) and potash, in cans, boxed, minimum carload weight 40,000 pounds.	60	58	48
Macaroni, noodles, and vermicelli, boxed, minimum carload weight 24,000 pounds.	100	96	80
Mantels, wooden (including not to exceed one grate for each mantel), minimum carload weight 16,000 pounds.	175	168	140
Matches, in paper or wooden boxes, packed in metallic or wooden cases, minimum carload weight 24,000 pounds.	110	106	88
Mattings, mats, and rugs, grass, in packages, minimum carload weight 30,000 pounds.	100	96	80
Mica, ground, in packages, minimum carload weight 30,000 pounds.	90	86	72
Milk, condensed, in hermetically sealed cans, boxed, or in bottles packed in boxes, or in wood, minimum carload weight 40,000 pounds.	85	82	68
Minor-meat and pie preparations, in glass, earthenware, or tin packages, boxed; in paper boxes, boxed; in pails or tubs when packed in boxes, crates, or barrels; in kits or kegs; or in bulk in barrels, or half barrels, minimum carload weight 30,000 pounds.	90	86	72

Articles.	From Chi- cago.	From Missis- sippi River.	From Mis- souri River.
Mining car wheels (with or without axles attached), minimum carload weight 30,000 pounds.....	Cents. 90	Cents. 86	Cents. 73
Musical instruments: Organs, melodeons, pianos, mechanical pianos, mechanical piano players, and automatic slot pianos, boxed; also organ and piano benches, chairs, and stools, upright pianos and organs (cabinet), wrapped and immovably braced in car, minimum carload weight 12,000 pounds.....	200	192	160
Nails and spikes (not including railroad spikes or ship and boat spikes), cut or wire, n. o. s. in boxes or kegs; wire (fence), iron or steel; smooth annealed, plain or galvanized; barbed, galvanized or painted staples; wire hoops, minimum carload weight 40,000 pounds.....	70	67	56
Nails, horse, in boxes, minimum carload weight 30,000 pounds.....	90	80	72
Nuts, edible, n. o. s. (not shelled), in packages, minimum carload weight 24,000 pounds.....	150	144	120
Oil-cake and oil-cake meal, minimum carload weight 40,000 pounds.....	75	72	60
Oilcloth (floor), linoleum, wood grain flooring and cork carpet, boxed or crated, carrier's convenience, straight or mixed carload, minimum carload weight 24,000 pounds.....	100	96	80
Oilcloth, n. o. s., boxed, crated, or wrapped, minimum carload weight 30,000 pounds.....	110	106	88
Paint, earth or mineral (including colored clay and mortar color), paint enamels, enamel finish, paint, dry zinc, oxide of zinc, leaded zinc, white or red lead paint, ground zinc in oil; paint, white or red lead or litharge, dry or in oil; paint, white lead, ground in oil; paint, bulk; paint, dry chemical; paint, n. o. s., and paint driers; putty, in cans, kegs, boxes, or barrels; wall coating, and wall finish, minimum carload weight 40,000 pounds.....	90	86	72
Paints, white or red lead or litharge, dry or in oil, in cans (packed in boxes or barrels), or in barrels, casks, kegs, kits, boxes, or iron drums, minimum carload weight 60,000 pounds.....	90	86	72
Paper, building, n. o. s., roofing and felt (including indented paper), minimum carload weight 30,000 pounds.....	65	62	52
News print, in boxes, bundles, rolls, or crates, minimum carload weight 30,000 pounds.....	75	72	60
Wrapping paper, n. o. s., in bundles, boxes, or crates, minimum carload weight 30,000 pounds.....	75	72	60
Box board, strawboard, minimum carload weight 30,000 pounds.....	75	72	60
Paper bags, plain or printed, minimum carload weight 40,000 pounds.....	100	96	80
Paper, writing (flat), plain or ruled, including Manila writing, ledger, linen, and bond papers and paper tablets, minimum carload weight 30,000 pounds.....	100	96	80
Paper hangings (not including decoration sets), veneering and linocrusta walton, minimum carload weight 24,000 pounds.....	120	115	96
Paper, news, in rolls, minimum carload weight 30,000 pounds.....	75	72	60
Pickles, n. o. s., including capers, catsup, cauliflower, chili sauce, chutney, cucumber, dill weed, horse-radish, India relish, kraut, mangoes, mustard (prepared), olive oil, olives, onions, pepper sauce, pickled peppers, salad oil, table sauce, n. o. s.; tomato, vinegar, Worcester sauce, in glass, earthenware, or tin packages, boxed; in tubs when packed in boxes, crates, or barrels; or in bulk in barrels, half barrels, kits, or kegs, minimum carload weight 30,000 pounds.....	100	96	80
Plaster, building, in packages, minimum carload weight 60,000 pounds.....	40	38	32
Potassium, cyanide of, in packages, minimum carload weight 30,000 pounds.....	120	115	96
Preserves (including mince-meat, fruit butters, and jellies), in glass, earthenware, or tin packages, boxed; in pails or tubs when packed in boxes, crates, or barrels; or in bulk in barrels, half barrels, kits, or kegs, minimum carload weight 30,000 pounds.....	110	106	88
Refrigerators, including refrigerator display cases, minimum carload weight 16,000 pounds.....	135	130	108
Resin, in barrels, minimum carload weight 40,000 pounds.....	55	53	44
Rice, broken rice, and brewers' rice, in packages, straight carloads, minimum carload weight 40,000 pounds.....	60	58	48
Rice, rice flour, rice meal, rice flakes or flaked rice, and broken rice, minimum carload weight 40,000 pounds.....	85	82	68
Rubber boots and shoes, including tennis shoes (canvas tops), boxed, minimum carload weight 24,000 pounds.....	175	168	140
Rubber rings for fruit jars, in boxes or barrels, minimum carload weight 30,000 pounds.....	100	96	80
Sad irons (not including electric sad irons nor gas, gasoline, charcoal, or alcohol burning sad irons), and sad-iron handles and stands, in boxes or barrels, minimum carload weight 30,000 pounds.....	85	82	68
Saleratus and bicarbonate of soda and soda carbonating compound, minimum carload weight 30,000 pounds.....	120	115	96
Salt soda, minimum carload weight 30,000 pounds.....	80	77	64
Sash weights and balance weights for folding beds and lounges, also counter-weights, minimum carload weight 60,000 pounds.....	40	38	32
Scales and scale beams, n. o. s. (not including computing scales, gold-weighing scales, nor assayers' or apothecaries' scales), all fragile parts boxed or crated, minimum carload weight 24,000 pounds.....	120	115	96
Scouring, washing, polishing, and sweeping compounds, n. o. s. (not including liquid compounds, except when in tin cans boxed), also washing crystals, minimum carload weight 40,000 pounds.....	80	77	64
Seed: Alfalfa, beet, clover, grass, hemp, mustard, rape, bird, timothy, millet, and canary, kafir corn seed, broom-corn seed, also wheat, corn, pop corn, oats, peas, and beans, minimum carload weight 30,000 pounds.....	100	96	80

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Articles.	From Chi- cago.	From Missis- sippi River.	From Mis- souri River.
Seed, vetch, in packages, minimum carload weight 30,000 pounds.....	<i>Cents.</i> 75	<i>Cents.</i> 72	<i>Cents.</i> 80
Sheep dip, liquid, minimum carload weight 30,000 pounds.....	65	62	62
Sheep dip, liquid, paste, or powdered, minimum carload weight 30,000 pounds..	85	82	86
Shingles, iron or metal, including tile roofing (galvanized iron), minimum car- load weight 30,000 pounds.....	90	86	72
Shoe nails, shoe tacks, and steel shanks, boxed, minimum carload weight 30,000 pounds.....	90	86	72
Shoes, heads, rings, tires, or dies (for quartz mills), also cams and tappets, iron or steel, minimum carload weight 40,000 pounds.....	90	86	72
Shot, in bags, minimum carload weight 30,000 pounds.....	75	72	69
Sledges, wedges, and mauls, iron or steel, in boxes, barrels, or crates, minimum carload weight 30,000 pounds.....	85	82	68
Soap, soap chips, and soap powder, in packages, minimum carload weight 40,000 pounds.....	80	77	64
Soda ash (may be shipped in sacks), soda crystals, caustic soda and hyposulphite, nitrate (may be shipped in sacks), silicate (may be shipped in sacks), and sul- phate of soda, sulphide of sodium and chloride of lime (may be shipped in casks), in kegs, boxes or iron drums, minimum carload weight 40,000 pounds..	55 80	53 77	44 64
Solder, minimum carload weight 40,000 pounds.....	80	77	64
Spring, bed, spiral, in boxes, crates, or bundles, minimum carload weight 24,000 pounds.....	110	106	88
Stamped ware: The following articles may be taken in mixed carloads with stamped ware at rate named below: Cans, kegs, and pails, made of sheet-iron or steel, n. o. s.; coal hods or scuttles, nested, copper wash boilers, copper tea kettles, not plated; galvanized children's bath tubs, galvanized foot tubs, galvanized garbage and ash barrels, galvanized iron buckets and tubs, galvanized iron wash boilers, galvanized iron wash bowls and pans, galvanized cans, gal- vanized sheet-iron mangers, iron ladles, skimmers, and cake turners, jap- anned or lacquered tinware, including japanned tin water coolers, metal toasters, milk shipping cans (may be taken loose), oilers (not including brass and glass oil cups), boxed; pierced, square, and round pans, nested; stamped iron dripping pans, stamped Russia iron mining pans, tin broom locks, tinned bucket ears, tinned iron handles, tinner's stamped trimmings, tin scoops, nested; tin spoons, boxed; tinned spoons, tubed cake pans, nested; zinc or tin can screws.			
Mixed carloads of articles described in these bracketed paragraphs, including, if desired, tinware in boxes, barrels, or crates, minimum carload weight 22,000 pounds.....	120	115	98
Starch (including corn starch) and dextrine, minimum carload weight 30,000 pounds.....	100	96	89
Stoves viz.: Radiators, cast iron, in straight carloads, minimum carload weight 40,000 pounds.....	100	96	89
Stovepipe, iron (out to shape), nested solid, boxed or crated, minimum carload weight 40,000 pounds.....	96	91	76
Stove boards, boxed or crated, minimum carload weight 30,000 pounds.....	90	86	72
Strawboard, in crates or bundles, minimum carload weight 50,000 pounds.....	55	53	44
Strawboard, tar board, or blinders' board, or wood-pulp board, in crates or bun- dles, minimum carload weight 30,000 pounds.....	75	72	69
Sweat and collar pads and harness pads (not leather), boxed or in bales, mini- mum carload weight 20,000 pounds.....	125	120	100
Syrup (corn, glucose, malt, maple, and rock candy) and molasses, minimum car- load weight 30,000 pounds.....	65	62	52
Tent pins (wooden), and tent keys in bundles, minimum carload weight 30,000 pounds.....	85	82	68
Tile, earthen or encaustic, for flooring and facing, plain or figured, glazed or unglazed, minimum carload weight 30,000 pounds.....	80	77	64
Tobacco stems, and refuse tobacco for sheep dip, minimum carload weight 20,000 pounds.....	120	115	96
Twine and cordage, viz: Cotton, flax, hemp, jute, fleece, sail, spring, sisal, manila, and cotton seine twine and cordage, and fish-netting twine (cotton), in bales, boxes or barrels; rope, all kinds except wire or hair; minimum carload weight 30,000 pounds.....	125 95	120 91	109 79
Twine, binding, for harvesters, minimum carload weight 24,000 pounds.....	95	91	79
Varnish, in barrels or in cans, boxed, straight carloads, or in mixed carloads with paints, as described on page 81 of Transcontinental Westbound Tariff 1-7 (Agent R. H. Countess's I. C. C. 904, supplements thereto or releases thereof), taking same rate in carloads, minimum carload weight 30,000 pounds.	85	82	68
Wagon material, club spokes, roughed out as from lathe, minimum carload weight 30,000 pounds.....	75	72	69
Wagons, farm, and common dump carts, without springs; dump wagons; hand or push carts, n. o. s.; lumber buggies; logging wagons and logging wheels and trucks; and extra parts (finished) of above mentioned vehicles; also, farm and bob sleds, straight or mixed, carloads, minimum carload weight 24,000 pounds..	115	110	92
Wagons, tank, (including sprinkling wagons), and extra parts for same, mini- mum carload weight 24,000 pounds.....	115	110	92
Wall coating and wall finish, n. o. s., in boxes, barrels, or casks, minimum car- load weight 40,000 pounds.....	65	62	52
Wheelbarrows (knocked down), wheelbarrow wheels, and barrel carts (knocked down), minimum carload weight 24,000 pounds.....	90	86	72
Window-curtain poles, wooden, minimum carload weight 24,000 pounds.....	90	86	72

Articles.	From Chi- cago.	From Missis- sippi River.	From Mis- souri River.
Window-curtain poles, window-shade rollers, wooden or tin, with or without springs, window-shade slats, wooden, and fixtures for same, minimum carload weight 24,000 pounds.....	Cents. 110	Cents. 106	Cents. 88
Wire cloth and netting, n. o. s. (in packages), straight or mixed carloads or in mixed carloads with coarse wire netting for fencing (in packages), minimum carload weight 30,000 pounds.....	120	115	96
Wire rods, minimum carload weight 40,000 pounds.....	70	67	56
Wire rope and cable, iron or steel, n. o. s., wire guy strands, minimum carload weight 30,000 pounds.....	110	106	88
Woodenware, in packages, as follows: bale handles, barrel covers, bowls, bungs, bung starters, butter dishes (must be packed in boxes, crates, or bundles), butter molds, clothes lifters, dowels (must be packed in boxes, crates, or sacks), faucets, ironing boards (k. d.), ladder rungs (must be packed in boxes, crates, or sacks), ladles, lapboards, lemon squeezers, mallets, measures (nested), pastry boards, plugs, potato mashers, rolling-pins, scoops, skewers, skirt boards, snow shovels, spades, spoons, steak mauls, towel rollers, trays, wash-boards, wedges, well buckets, boxes (nested), butter boxes, butter trays, butter tubs, cheese boxes, churns (hand), clothes folding racks, clotheshorses, clothespins (for straight carload rate, see page 39), coat hangers, coat racks, cocoa dippers, curtain stretchers, drums (set up), dustpans, firkins, fish barrels, hatracks (hall) in the white (not furniture), hoops, hose menders, kits, knife boxes, match safes, pails (including fiber-ware pails, nested), pails (with mop wringer attachments) paper, barrels, plates (including pulp pie plates and pulp butter plates, nested), rope reels, salt boxes, sheaves, shot cases, sieves and rims, spice cabinets, spools, n. o. s., stepladders, tea caddies, tooth, picks, towel racks (without mirrors), tubs (including fiber-ware tubs, nested), vegetable cutters, wooden bale boxes, wooden bottle corks: straight or mixed carloads of articles of woodenware as described, also wooden baskets, and wooden boxes, minimum carload weight 16,000 pounds.....	125	120	100
Zinc plate, minimum carload weight, 40,000 pounds.....	125	120	100
Zinc, sheet, in casks or boxes, minimum carload weight, 40,000 pounds.....	125	120	100
Zinc, slab (spelter), minimum carload weight, 40,000 pounds.....	75	72	60

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No. 1665.
RAILROAD COMMISSION OF NEVADA
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 7, 1909. Decided June 6, 1910.

Class rates from points in eastern defined territory to points in Nevada found unreasonable; reasonable rates prescribed for the future.

H. F. Bartine and R. C. Stoddard for complainant.

F. C. Dillard, P. F. Dunne, and C. W. Durbrow for Southern Pacific Company and Nevada & California Railroad Company.

Seth Mann for Traffic Bureau of the Merchants' Exchange of San Francisco, intervener.

Edward G. Kuster and Joseph P. Loeb for Associated Jobbers of Los Angeles, intervener.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The highest main-line rates to be found in the United States are those from eastern points to stations in Nevada. For carrying a carload of first class traffic containing 20,000 pounds from Omaha to Reno the Union Pacific-Southern Pacific line charges \$858. If a like carload is carried 154 miles further, to Sacramento, the charge is but \$600. The first class rate to the more distant point, Sacramento, is \$3 per 100 pounds, and to the nearer point, Reno, \$4.29 per 100 pounds. If a like carload of freight originates at Denver, 500 miles west of Omaha, the same rates to Reno and Sacramento apply; and if the freight originates at Boston, 1,700 miles east of Omaha, the rates are the same. This interesting rate condition arises out of two simple facts: (1) The whole of the United States from Colorado common points to the Atlantic seaboard, barring a few of the southeastern states, is one wide group or zone from which practically uniform rates to Pacific coast water points are made, and (2) the rates to no are based upon these blanket rates to coast cities, and amount

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to the sum of the rates to the coast plus the local rates back to point of destination.

This great zone, extending from the Rocky Mountains to the Atlantic, a distance of over 2,000 miles, from which practically uniform rates are made to Pacific coast terminal cities, is probably without parallel in the railroad world, excepting for a similar eastward blanket extended to Pacific coast producing points. The zone in which the same rates apply on California citrus fruits, for instance, extends from Salt Lake City on the west to Portland, Me. It is manifest that the transcontinental railroads have made a near approximation to the postage-stamp system of rate making. Their policy has been to give to all eastern producing markets an opportunity to sell to the terminal cities upon a parity as to transportation charges and to give to Pacific coast producing points access to all eastern markets upon a like basis. To the great basin lying between the Rocky Mountains and the Sierra Nevadas the carriers have in a limited degree extended this same policy by making rates into Nevada based on the coast cities, and thus, the carriers say, they give to this territory the advantage of its proximity to the Pacific seaboard; that the rates to the latter are made low because of water competition between the Atlantic and Pacific ports—lower than would be justified were Sacramento and San Francisco not upon the water—and that Nevada rates would be still higher but for its nearness to the Pacific coast.

The state of Nevada, through its railroad commission, now comes asking that Nevada points be given the same rates as are now given to Pacific coast terminals, urging that these coast rates are not unreasonably low in themselves, and are not the product of any real water competition.

The complaint originally filed in this case made the Southern Pacific the sole defendant; the reasonableness of the rates from the east to Nevada were not attacked, excepting in so far as they are based on the rates to further western points, and include a back-haul charge. As the complaint then stood the petition was that this Commission should hold it to be unreasonable for the Southern Pacific, delivering freight at Reno and other points in Nevada, to charge for a back haul which is not in fact given, and that we should adjudge the rates to Sacramento to be reasonable as applied to the intermediate points. Later the complaint was amended by adding carriers east of Ogden forming a single through route from the Atlantic coast. So that the petition of Nevada now is that from all points upon this through route reasonable rates shall be fixed which shall not exceed those now applicable on shipments from such points to the more distant coast terminals. It is suggested by the complainant that we bring in other carriers as defendants, so that the entire

eastern territory may be covered by our order. This we think unnecessary, assuming, as we do, that the conclusions here reached as to a through route from the east to the west will be adopted and established by other lines similarly situated.

CONSTRUCTION OF NEVADA RATES.

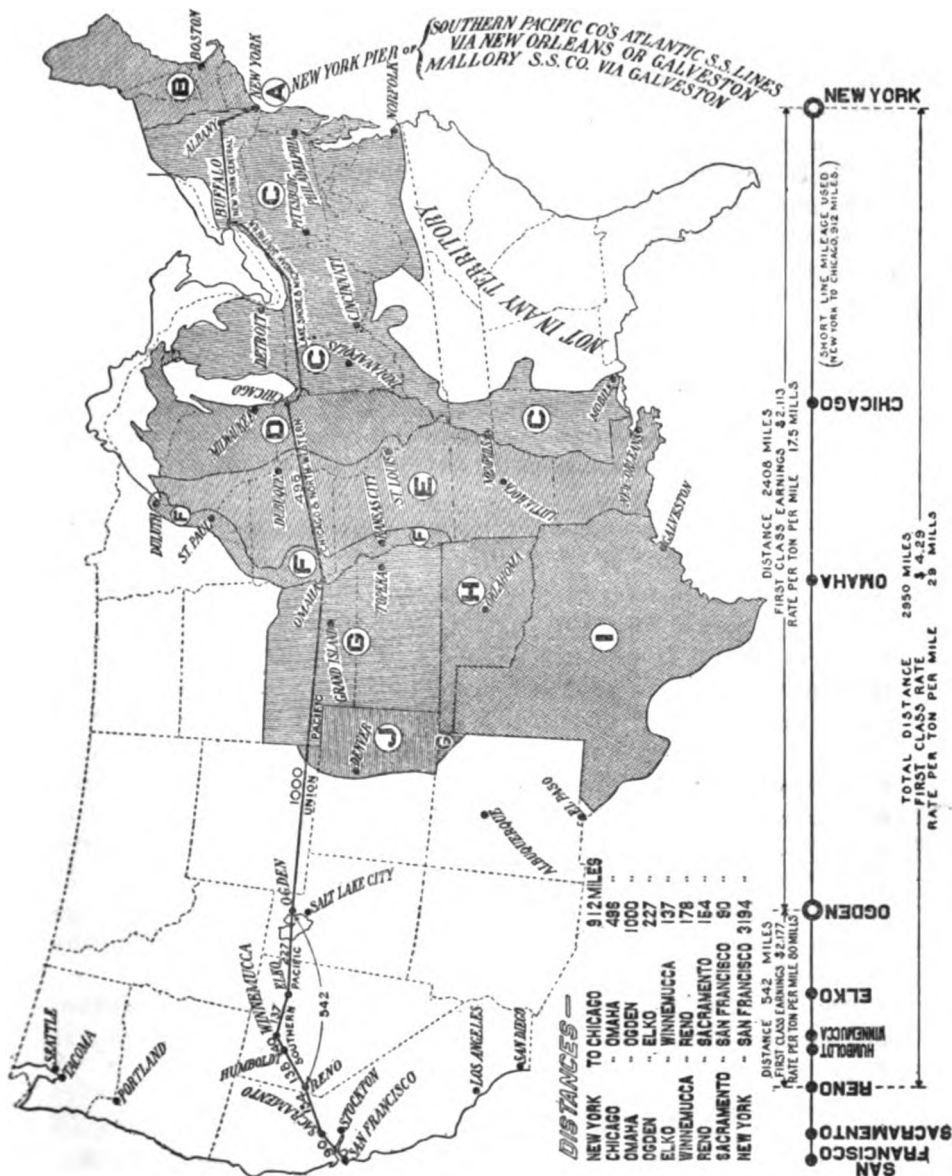
To reach a clear understanding of the basis upon which Nevada rates in general are now fixed, it is necessary to bear primarily in mind the fact before referred to, that the carriers of the country have united in establishing a zone 2,000 miles in width from which rates are practically uniform to what are known as "coast terminals." There are 152 of these coast terminals, 97 of which are in California. They are points more or less arbitrarily established by the carriers, but which are either upon inlets from the ocean or rivers running to such inlets, or are but slightly removed from such water points. The most prominent coast terminals are Seattle, Tacoma, Portland, Sacramento, San Jose, Stockton, Oakland, San Francisco, Los Angeles, and San Diego. To these coast terminals are extended what are known as "terminal rates" on westbound transcontinental traffic. These rates apply either from all of eastern defined territory or from separate groups therein. The shaded portion of the accompanying map indicates eastern defined territory and the groups into which it is divided. These groups are lettered from A to J. A is limited to New York City piers, and has to do only with shipments by steamship via Gulf ports; B covers New England territory; C, New York territory and the middle states, with New York City as the principal point; D, Chicago and adjacent territory; E, the Mississippi River, with St. Louis as the principal city; F, the Missouri River; G, Kansas; H, Oklahoma; I, Texas; and J, Colorado, with Denver as its central point.

Class rates.—Coming, then, to the construction of the Nevada class rates, we find that the carriers have employed three methods of construction during the past two years. Prior to January 1, 1909, there existed a body of what were known as intermediate class rates to Reno from certain designated eastern points. These rates were, on first class—

From Chicago-Milwaukee common points.....	\$3.90
From Mississippi River common points.....	3.70
From Missouri River common points.....	3.50
From Colorado common points.....	3.00

An alternative clause gave Reno the right to the combination rate based on Sacramento whenever that should be lower. This indefinite method of stating rates the Commission condemned in a general ruling. The tariffs were then changed so as to cancel the alternative

clause and the intermediate class rates and thus to make all Nevada rates base on Sacramento. This was the situation when the case was heard. Later, however, in June of last year, a third plan was



adopted, and that now obtains, viz, to divide Nevada into two zones with Humboldt as the dividing point. Points west of Humboldt take the Sacramento combination. Points east of Humboldt take generally the Ogden combination. It is unnecessary herein to trace

the history and the effect of these various changes in the method of rate basing. We shall deal with the rates to all Nevada points as joint rates. And inasmuch as rates on all ten classes were quoted by the carriers' tariffs from all eastern defined territory to coast terminals and therefore by combination to interior points, at the time when this proceeding was brought, we shall consider that our jurisdiction extends to the installation of such rates to all of such territory.

To ascertain the rate upon a shipment from New York to Reno one looks in vain for any one tariff in which such rate is to be found. By examination of the tariff of the Transcontinental Freight Bureau, to which the Southern Pacific Company is a party, this note is discovered:

Rates to intermediate points.

When no specific rate is named to an intermediate point shown in Transcontinental Freight Bureau Circular No. 16-C (I. C. C. No. 864), supplements thereto, or reissues thereof, rate to such an intermediate point will be made by adding to the rate shown to the point designated herein as "Terminal," which is nearest destination of shipment, the local rate from nearest terminal point to destination.

Turning to Transcontinental Freight Bureau Circular No. 16-C (the issue at the date at which this complaint was brought), we find Reno named as an intermediate point, and that the nearest terminal to Reno is Sacramento, 154 miles west of Reno. We find, then, by returning to the Transcontinental Freight Bureau west bound tariff, the rate applicable upon the shipment to Sacramento. Then, having ascertained this from a tariff to which all of the carriers from New York to Sacramento are parties, we must next find the local rate from Sacramento to the destination of the freight, which is east of Sacramento. This local rate, Sacramento to Reno, we find in a tariff to which the Southern Pacific Company alone is a party. Thus we have, through a maze of tariffs, at length discovered the rate from New York to Reno, which is made up of a joint through rate to Sacramento and a local rate of the Southern Pacific Company alone from Sacramento back to Reno.

The all-rail class rates, in cents, per 100 pounds from eastern defined territory to coast terminals were, when this case was brought, as follows:

	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Groups B, C, D, E, F, G, H, and I.....	\$3.00	\$2.60	\$2.20	\$1.90	\$1.65	\$1.60	\$1.25	\$1.00	\$1.00	\$0.95
Group J.....	3.00	2.60	2.00	1.75	1.60	1.40	1.20	.95	.85	.80

An examination of present tariffs will show that from New England and New York territories (Groups B and C) no class rates below fourth class are now extended. Prior to January 1, 1909, however, and at the time this complaint was brought, rates were given for the full 10 classes from these groups, and such rates upon the \$3 scale are now given to coast terminals from Group A, the freight being carried from the New York City piers to New Orleans and Galveston by ocean carriers and thence by rail. It will also be seen that from Group J slightly lower rates are made on all classes below second class than are made from other groups. With these exceptions, however, the rates are uniform throughout the whole eastern defined territory as to classified freight.

The local rates on classes from Sacramento to Reno are as follows:

Class----	1	2	3	4	5	A	B	C	D	E
Rate----	129	112	102	87	78	78	24	23.5	25.5	25.5

The result of the combination on Sacramento is therefore to produce the following rates to Reno:

From Groups B, C, D, E, F, G, H, and I:

Class----	1	2	3	4	5	A	B	C	D	E
Rate----	429	373	322	277	243	238	159	133½	125½	120½

From Group J:

Class----	1	2	3	4	5	A	B	C	D	E
Rate----	429	373	302	262	238	218	154	128½	110½	105½

Rates to points east of Humboldt, such as Winnemucca and Elko, under the present method of making rates on the Ogden combination, vary as the rate from point of origin to Ogden.

The effect of this change in method of making rates may be illustrated briefly by the statement that the first class rate to Reno from Chicago prior to January 1, 1909, was \$3.90, whereas it is now \$4.29; from Missouri River \$3.50, and now \$4.29. To Elko, on the other hand, the first class rate from Chicago is now \$4.27, as against a previous rate of \$4.72½, when the rate based on Sacramento.

For many years the class rates to interior points, such as Reno, were no higher than to the terminals. On April 11, 1893, the practice of maintaining lower terminal rates was instituted. The first line of figures in the table below shows the Reno rates when this case was brought; the second line, the rates in 1892; and the third line, the difference, or the amount by which the rates have been increased.

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To Reno from—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Missouri River common points	429	373	322	277	243	238	159	133½	125½	120½
1892 rates	300	300	250	200	175	175	155	125	110	100
Difference	79	73	72	77	68	63	4	8½	15½	20½
Mississippi River common points	429	373	322	277	243	238	159	133½	125½	120½
1892 rates	370	320	260	205	180	182	163	130	115	105
Difference	59	53	62	72	63	56	.....	3½	10½	15½
Chicago common points	429	373	322	277	243	238	159	133½	125½	120½
1892 rates	390	340	270	210	185	190	170	135	120	110
Difference	89	83	52	67	58	48	.....	.....	5½	10½

Commodity rates.—While there are many hundred commodity rates extended to coast terminals, there are but few given to intermediate points. On the following articles the commodity rates are the same to Utah and Nevada points as to Pacific coast terminals from Groups D, E, F, G, H, I, and J of eastern defined territory, which include all points from Chicago west:

Apples; bananas; beer, in wood; bones; broom corn; butter, but-terine, oleomargarine, eggs, cheese, and dressed poultry; cars, street; barley, corn, rye, oats, and speltz, c. l. and l. c. l.; bran and shorts, c. l. and l. c. l.; brewer's grits, brewer's meal, corn meal, corn chop or chop feed, chopped corn, cracked corn, and hominy; buckwheat, c. l. and l. c. l.; wheat, c. l. and l. c. l.; cooperage, cranberries; fertilizers, n. o. s.; household goods, c. l. and l. c. l.; live stock; machinery, min-ing; mineral-water bottles, returning; oil cake and oil-cake meal; onions; onion sets, l. c. l.; packing-house products; pineapples; plaster, building; poultry, alive; railway equipment; and staves and headings.

As to all but two or three of these commodities, the rates are the same to Reno as to Sacramento from Chicago. That is to say, the blanket rate made from all eastern defined territory to coast terminals on these commodities is applied from Chicago to Reno. There are a few other commodities upon which commodity rates are given to Reno which are somewhat higher than the rates from Chicago to Sacra-mento, viz, automobiles, buggies, carriages, wagons, vehicles, and coal, coke, and guano from certain far western points. From an examina-tion of the tariffs it appears that the transcontinental commodity rates—rates from eastern defined territory to the coast terminals—are at the present time higher than they were ten years ago by a very con-siderable percentage and this regardless of the fact that the base of supplies has been constantly moving westward, thereby narrowing the distance between point of production and consumption.

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VOLUME OF NEVADA TRAFFIC.

Nevada is colloquially known as the "Sage Brush State," and from the car window it presents the spectacle of an almost uninterrupted waste. Railroad men speak of it as a "bridge"—unproductive territory across which freight must be carried to reach points of consumption. The figures of the Southern Pacific demonstrate, however, that while Nevada traffic may at one time have been negligible such is no longer the case.

Some time before this proceeding was brought the Southern Pacific Company, which is the lessee of the Central Pacific running from Ogden west into California, brought suit in the United States circuit court for the district of Nevada attacking certain rate schedules upon state traffic established by the state commission. In support of its case the Southern Pacific Company filed an affidavit made by Mr. C. B. Seger, auditor of the Southern Pacific Company, showing the earnings of the Central Pacific on business wholly within the state, on business passing through the state, on business originating in and passing out of the state, and on business originating outside and having its destination in the state, for the fiscal year ending June 30, 1907. Mr. Seger said by way of explaining his figures:

The freight earnings accruing to and made by said Southern Pacific Company in Nevada, being the revenue itself, without reference to its disposition under any lease, agreement, or otherwise, are derived for the said fiscal year 1907 from through and local business, understanding by local business such as is strictly intrastate in character, picked up and laid down within the limits of the state of Nevada, and understanding by through business such as is interstate in character. Further differentiating, said interstate business consists, first, of business originating outside and coming into the state; second, of business originating in and passing out of the state; and, third, of business originating outside the state, having destination beyond the state, and, in relation to the state itself, simply passing through the state. The freight earnings for said fiscal year, and pertaining to the said business as above classified, are set forth under the appropriate heads, and are, in fact, as follows:

	Revenue.	Percent- age of total.
Intrastate.....	\$159, 791. 40	0. 02
Originating outside and coming into the state.....	1, 683, 687. 69	. 20
Originating in and passing out of the state.....	\$31, 802. 96	. 10
Passing through the state.....	2, 675, 282. 05	. 82
	5, 578, 282. 28	. 68
Sum total.....	8, 258, 564. 33	1. 00

Surprising as these figures are they apparently do not fully set forth the extent of Nevada business at this time, as is shown by an exhibit filed by the Southern Pacific Company in the present case,
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giving the business west of Ogden for the single month of February, 1909, which may be epitomized thus:

	Revenue.	Percent- age of total.	Tonnage.	Percent- age of total.
Intrastate.....	\$29,001.00	0.03	4,715	0.04
Into and out of Nevada and Utah west of Ogden.....	314,379.65	.38	64,367	.50
Passing through the state	343,390.65	.41	69,182	.54
	495,128.37	.59	60,271	.46
Total for month of February, 1909	838,509.02	1.00	130,463	1.00

Another most interesting showing is made by the Seger affidavit as to passenger business on the Southern Pacific in the state of Nevada for the year 1907, the figures given being these:

	Revenue.	Percent- age.
Intrastate.....	\$285,235.65	10
Originating outside and coming into the state	857,511.65	9
Originating in and passing out of the state.....	267,662.85	13
		— 22
Passing through the state.....	1,962,915.33	— 32
		68
Sum total	2,874,245.33	100

The statement for the month of February, 1909, referred to above, sets forth very clearly not only the volume of business going into and out of Nevada and the earnings of the Southern Pacific thereon, but also gives a specific analysis of the sources of the traffic, showing the volume which comes into Nevada from the east and that which comes from California. Under "Question 2" below will be found a statement of the freight received at Nevada and Utah points from points west of Calvada, which is a station directly on the California-Nevada state line. This table, however, should not mislead; a considerable percentage of the traffic from California is traffic of eastern origin reshipped from California to Nevada. The table also includes coal and other commodities of very large tonnage (approximately one-half of the total in weight) coming from points west of eastern defined territory.

Territorial movement.	Total.	
	Tons.	Southern Pacific earnings.
Gross total tonnage and earnings of the Southern Pacific Co. for the month of February, 1909.....	912,302	\$3,422,529.00
<i>Question No. 1.</i>		
Freight via Ogden to California.....	37,886	\$20,220.55
Freight via Ogden from California.....	22,386	174,907.82
	60,271	495,128.37
<i>Question No. 2.</i>		
Freight via Ogden to points in Nevada and Utah.....	17,485	66,284.88
Freight received at Nevada and Utah points from points west of Calvada....	16,823	144,965.00
Freight via Ogden from points in Nevada and Utah.....	18,381	33,462.77
Freight forwarded from points in Nevada and Utah to points west of Calvada....	11,678	69,667.00
	64,367	\$14,379.65
<i>Question No. 3A.</i>		
Freight received in California, San Francisco and north, from all points in California, including interchange with connecting lines in California.....	189,827	365,168.00
<i>Question No. 3B.</i>		
Freight picked up and laid down in Nevada and Utah and freight moving between Nevada and Utah—		
Nevada to Nevada.....	4,046	21,839.00
Utah to Utah.....	144	948.00
Utah to Nevada.....	499	5,122.00
Nevada to Utah.....	26	1,092.00
	4,715	29,001.00

There was a time, doubtless, when Nevada traffic, save to the mines on its westernmost border, was but trifling. At present, however, it has a traffic, both freight and passenger, which is far too considerable to be overlooked under the rule *de minimis*. And it is to be remembered that the figures given apply to but one road, whereas a second is in operation across the state to the south, and a third is beginning operations on the north.

SOURCES OF EASTERN TRAFFIC.

It is interesting in this connection to regard the point of origin of this eastern freight. The railroad commission of Nevada had access to the billing of all shipments reaching Reno, and from these compiled a series of statements which appear to show that the great body of Nevada traffic which comes directly from the east via Ogden originates west of the Indiana-Illinois state line.

From one exhibit it appears that of the 1,063,687 pounds of less-than-carload shipments originating in eastern defined territory and delivered at Reno during the months of January, February, March, and April, 1908, only 10 per cent originated at the Atlantic coast cities of New York, Boston, and Philadelphia, and only 25 per cent in Connecticut, District of Columbia, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia. This exhibit

further shows that on the traffic moved the charges were \$32,719.30; that if terminal rates had been applied charges would have been \$21,956.24; and that the difference is \$10,748.07. In other words, the charges on these shipments to Reno were 48.3 per cent higher than would have been the charges on the same shipments had they been carried over the mountains to Sacramento.

Another exhibit shows that of 21,000,000 pounds of carload freight, earning \$278,000, moved from eastern defined territory into Reno, 9,500,000 pounds, earning \$120,000, moved in at rates no higher than terminals. It further shows that only 4,500,000 pounds of the 21,000,000 originated east of Chicago. This exhibit shows, aside from the products carried to Reno at terminal rates, that the charges were, for the year 1908, \$157,824.94; that the terminal charge would have been \$99,679.90; and the difference, \$58,524.40. In other words, the charges on carload shipments to Reno were 59 per cent higher than the charges on the same shipments would have been had they been carried to Sacramento.

Commissioner Thurtell estimated from the figures at his hand that the total receipts under present rates upon business brought into Reno via Ogden for the year 1908 amounted to \$454,343.69 and under terminal rates the revenue would have been \$363,865.23, a reduction of \$90,478.46. The statement also shows that the revenue to the Southern Pacific from this business was \$268,516.40 and would have been under terminal rates \$178,037.94, a reduction of \$90,478.46, or about 33 per cent. Expressed in revenue the Southern Pacific on the haul from Ogden to Reno earned \$11.51 per ton, while if terminal rates had been charged its earnings would have been \$7.63 per ton.

On the whole, the figures given in this case, which are the most authoritative thus far presented to the Commission with reference to the sources of westbound transcontinental traffic, indicate that less than 25 per cent of the traffic into Reno from the east originates east of Chicago, while 75 per cent originates between Chicago and Denver. In other words, the needs of the people on the west coast may be and are in great part supplied from sources nearer home than the Atlantic seaboard.

The manufacturing center of the country has moved westward and rates from the Atlantic seaboard that were once necessary are now almost unused. It may be historically the fact, as the carriers assert, that the transcontinental blanket rates given to the Pacific coast cities were put in to meet water competition from the Atlantic coast points, and that these rates were extended westward from the Atlantic as matter of grace to western manufacturers and producers; to-day, however, it might well be said that this blanket is extended not westward, but eastward, so as to give the eastern manufacturer or jobber some opportunity to reach the far western markets.

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WATER COMPETITION.

As we have seen, the rates are higher on almost all commodities from eastern producing points to Reno than on these same commodities to Sacramento, the more distant point. Without explanation this constitutes a violation of the long-and-short-haul clause of the act. The carriers justify the lower rates to the more distant point upon the ground of water competition. They say that the rates charged to Reno and other Nevada cities are reasonable in themselves measured by the cost of the service to the carrier or the value of the service to the shipper, and that rates to the coast cities measured by these standards are too low to be considered reasonable and would not be in effect but for the force of water competition. The Nevada commission, on the other hand, contends that while some commerce does move from the Atlantic seaboard by water, the volume is so small that it is not influential in determining the present rate to the coast terminals; that the coast rate itself is reasonable, and therefore that the application of a higher rate to an intermediate point can not be justified. The making of higher intermediate rates, they strongly urge, is a matter of railway policy and not of railway necessity, in that the railways wish to develop the coast cities as jobbing centers to the exclusion of interior points; that the revenues of the carriers would not be seriously impaired were this policy abrogated and as low rates given to the intermountain country as are now extended to the coast cities.

It is no reflection upon the traffic manager of a railroad to say that he bases his rates upon some line of policy. He deals directly, and in most cases exclusively, with the producer or the jobber. His concern is to keep these patrons satisfied and at the same time bring to his railroad the greatest possible revenue. This is what he means by saying that he charges what the traffic will bear. He regards as reasonable whatever rate will make for the best interest of his road, and in determining this he adopts a line of policy which affects either favorably or unfavorably the industrial growth of the communities which the carrier serves. The restrictions of the act to regulate commerce are governmental limitations placed upon the unlimited and arbitrary discretion of traffic officials. While the latter may adopt policies which they regard as most favorable to their roads, such policies must be restricted by the inhibitions of the law which this Commission must enforce. The policy of making Reno rates base upon those extended to the more distant point may not be justified upon the ground that Reno traffic will bear that imposition, but may be justified by conditions obtaining at the more distant point which the carrier may meet without offense to any provision of the act.

And this brings directly to our consideration the question of water competition at Sacramento and other coast terminals. It is, of course, a physical fact that commerce may be carried by water from the eastern seaboard to the Pacific coast. It is admitted by all, and substantiated by the evidence in this case, that some commerce does actually so move. An estimate has been made by complainant that approximately 3,000,000 tons of transcontinental traffic reaches the coast terminals during each year by rail, while the highest figure given as the volume of traffic reaching those points by water from the eastern seaboard is under 10 per cent of the rail movement. The fact, however, that it moves in large or small quantities does not of itself sustain the contention that the present rates from eastern defined territory to coast terminals are so low as not to make a reasonable return to the carrier for the service performed. A movement of traffic may be affected by water competition at a more distant point and yet a rate made up of the combination of the rate by water plus the rate back be unreasonable and unjust. Nevada, Utah, Arizona, and Idaho are nearer to the Pacific coast than to the Atlantic, but this does not of itself justify charging them overland rail rates which will give them none of the advantages arising out of their shorter distance to an eastern base of supplies. Nor does it follow that a rate to a point on the seaboard is lower than would be justified if that point were not so situated. In short, it is not sufficient to state that the terminal points are situated on the water to excuse the imposition of higher rates at intermediate points.

There has been little difficulty experienced from time to time by the rail carriers in raising rates to the Pacific coast; the only live water competitor on the Pacific to-day is a line which bases its rates on the rail tariffs, and the rates of both the rail and the water lines change simultaneously. Ways can be found, and have been found, by which the presence of the ocean as a controlling, or even greatly meddlesome, factor in the fixing of railroad rates can be nullified. There is no doubt but that rail rates have been influenced at times to all the Pacific ports by water carriers, and of course there is the possibility that at any time this water competition may become seriously aggressive and potent. The United States is not a maritime nation at present, and her great coast line on the Pacific side is served in great part by such water carriers as the railroads permit to live.

While, therefore, physical conditions at the coast are dissimilar to those at interior points the rates to the coast are not necessarily less than in fairness the traffic should carry. The water carriers between the Atlantic and the Pacific coasts at present charge rates from 25 to 40 per cent less than their railroad rivals. To get this business the water carrier at the eastern port reaches inland and absorbs a rail

rate of 20 cents upon commodities which carry more than a 50-cent water rate to the Pacific coast. The American-Hawaiian Steamship Company then transports the freight by water to the Tehuantepec road, where it is transshipped across the Isthmus, and being loaded again is carried to a Pacific coast port and there reshipped either by rail or water to certain designated points of destination inland from the port. In such a movement there is involved a rail haul of 400 or 500 miles, at least six, and possibly more, separate handlings of each parcel of freight, and a haul by water of fully 5,000 miles. Freight moving via Panama is subject to even heavier conditions. It is insisted by the Nevada commission that water competition of this character is not sufficiently aggressive or formidable to compel the railroads to make any other rates to the coast terminals than those which from reasons of policy they are at present making. The suggestion is not without pertinence that if four different transportation services, three by rail and two by water, involving at least six handlings of the freight and a total haul of 5,500 miles, can be furnished profitably at from 60 to 75 per cent of the rail rate, the compensation to the rail carrier for an all-rail haul of 2,500 miles, with no handling and but two terminal charges, should produce ample revenue to the rail carrier.

There are many interesting developments in this and other trans-continental cases touching this matter of competition by water. For instance, the lowest rate does not in all cases apply to and from the seacoast points. There are many commodities upon which the rates from Chicago and Kansas City to Sacramento and San Francisco are less than they are from New York. And yet it is said to be the competition from New York that produces the low rate. In no case is the rail rate from New York less than is the rate from other portions of eastern defined territory, while of course in all cases New York is nearer the source of the competing force, the ocean. This is accounted for by the carriers on the ground that by taking the same, or a lower, rate from the interior points to the coast terminals the rail carrier avoids the longer rail haul, the points of origin and destination being nearer together. This is an application of what the carriers term "market competition," but it is not a strong argument to sustain the theory of water competition.

As usually applied by carriers market competition results in the hauling of commodities produced at places distant from the point of consumption to compete with the same commodities from points nearer to the point of consumption. In this case, however, market competition is said to be the controlling factor which justifies a rate from an interior point less distant from destination. Thus we have a \$3 rate from New York to Sacramento to meet water competition, and a \$3 rate from Kansas City to meet market com-

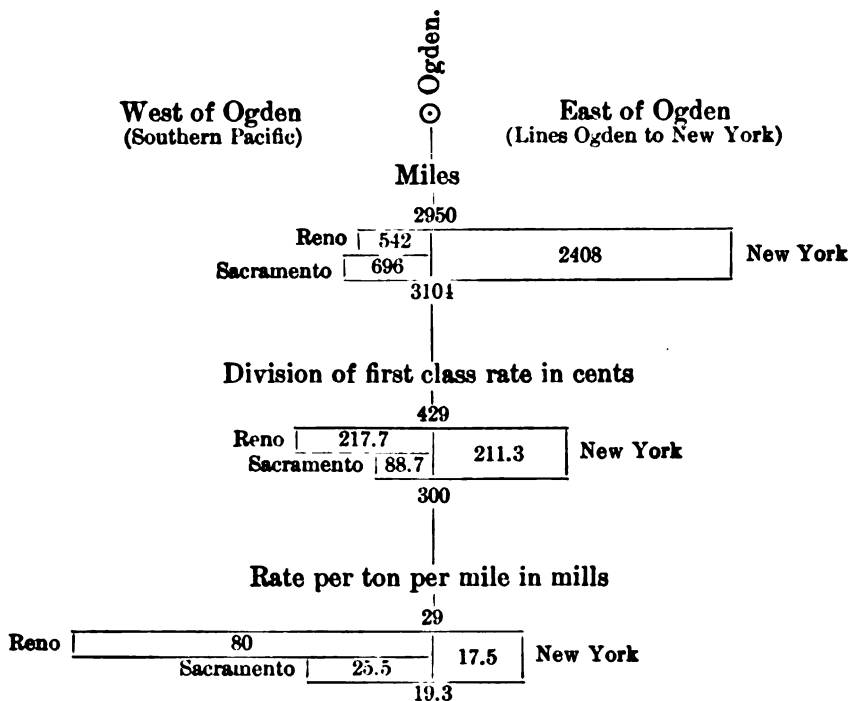
petition. We also have a \$4.29 rate from Kansas City and from New York, to Reno, as a reasonable rate because of water competition from New York to Sacramento.

We do not regard the divisions of rates as in any wise conclusive as to the reasonableness of rates between certain points, but such divisions are sometimes of significance. In the present case we find that if 100 pounds of freight is shipped from Boston, or New York, or Chicago, or St. Louis, or Omaha to Sacramento on the \$3 rate, and another 100 pounds of the same kind of freight is shipped from the same points to Reno on the same day, the carriers east of Ogden receive precisely the same earnings upon both shipments; but the Southern Pacific, west of Ogden, receives far more upon the Reno shipment than on the Sacramento shipment. This is illustrated in the following table:

From—	To—	Rate.	Earnings east of Ogden.	Earnings of Southern Pacific Company (west of Ogden).
		<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Group B, Boston.....	(Sacramento.....	300	211.3	88.7
	Reno.....	429	211.3	217.7
Group C, New York.....	(Sacramento.....	300	211.3	88.7
	Reno.....	429	211.3	217.7
Group D, including Chicago, etc.....	(Sacramento.....	300	181.0	118.1
	Reno.....	429	181.0	248.0
Group E, including Mississippi River.....	(Sacramento.....	300	174.5	125.5
	Reno.....	429	174.5	254.5
Group F, including Missouri River.....	(Sacramento.....	300	150.3	149.7
	Reno.....	429	150.3	289.7

Neither at the hearings nor in the argument did the carriers east of Ogden contend that their divisions of these rates were unreasonable. The Southern Pacific, however, the carrier which makes the last 700 miles of a 3,100-mile haul, strenuously insists that its rates to the more distant points are compelled by water competition for the purpose of defending higher rates to intermediate points; while the carriers performing 2,400 miles of that service appear to regard the rate as entirely reasonable. The line from New York to Sacramento and Reno constitutes a through route and in law the carriers engaging therein constitute one line. If the Sacramento rate is less than a reasonable rate and the result of competition then it would seem fair to assume that all of the carriers engaging in the transportation so consider it and would accordingly demand a lesser division than the division they would be justified in requiring out of the higher rate to the intermediate point. The fact remains, however, that for the 2,400-mile haul from New York to Ogden the New York Central, the Lake Shore, the North Western, and the Union Pacific receive the same revenue out of the \$3 rate to Sacramento that they

do out of the \$4.29 rate to Reno. This is graphically illustrated by the following diagram showing the division of the rate:



PRODUCTIVE FREIGHT TERRITORY.

We have gone extensively into an investigation of the conditions surrounding this traffic and in anywise governing the basis upon which the rates to Nevada from the east should be governed. What has been said herein gives little more than a suggestion of the extent of the inquiry which has been made. We have, for instance, had reports made upon the financial condition of the carriers involved, and their ability to meet any reduction which the Commission might direct without serious impairment of their revenues, an interesting fact in this connection being this: During the past two years the operating revenues of the Southern Pacific Company's Pacific system have increased \$8,000,000 while its operating expenses have decreased \$5,000,000, thus producing an increased operating income of over \$12,000,000, or a net increase of about \$2,000 per mile of road.

There appears in the record a compilation from the statistics of this Commission for the years 1898-1907 in which it is shown that in these ten years the carriers in the Pacific coast territory doubled

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their freight tonnage, which rose from 18,000,000 to 35,000,000 tons; almost doubled their gross revenue; their receipts per mile increased over 70 per cent; their receipts per ton per mile increased from 1.07 to 1.25, or about 20 per cent; while the relation of expenses to earnings remained practically constant at 62.50 per cent. These figures are for all the roads in the Pacific territory. But if we take the Central Pacific alone we find it third in the list of Pacific coast roads in tons carried and the highest of all in freight earnings per mile (\$13,453 per mile in 1907). While it is one of three railroads in the west carrying over a million tons of freight per mile of road—the average for the United States—the earnings of the Central Pacific per mile are 65 per cent greater than the average for the United States and 100 per cent greater than the average of the roads west of Chicago.

CONCLUSIONS.

The time has come, in our opinion, when the carriers west of the Rocky Mountains must treat the intermountain country upon a different basis from that which has hitherto obtained.

Nevada asks that she be given rates as low as those given to Sacramento. The full extent of this petition can not be granted. In making rates to Reno from a territory broader than the whole of continental Europe we have necessarily given consideration to existing rates to other intermediate points and to points upon the Pacific.

We are of opinion that the class rates to Reno, Winnemucca, and Elko, and other points in Nevada upon the main line of the Southern Pacific Company, from stations on the lines of the defendants between New York and Denver and other Colorado common points are unreasonable and unjust and that for the future no higher rates than those set forth below should be charged to Reno and points east thereof to, but not including, Winnemucca:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Denver and other points in Group J a . . .	\$2.10	\$1.92	\$1.54	\$1.33	\$1.12	\$1.12	\$0.87	\$0.70	\$0.66	\$0.60
Grand Island and other points in Group G a	2.30	2.00	1.66	1.45	1.22	1.22	.96	.76	.73	.66
Omaha and other points in Group F a . . .	2.50	2.17	1.83	1.58	1.33	1.33	1.04	.83	.79	.71
Clinton and other points in Group E a . . .	2.80	2.42	2.03	1.71	1.43	1.46	1.14	.91	.86	.78
Chicago and other points in Group D a . . .	2.90	2.51	2.00	1.75	1.47	1.50	1.18	.94	.89	.80
Toledo and other Cincinnati-Detroit common points b	3.05	2.63	2.19	1.81	1.52	1.56	1.23	.98	.92	.83
Buffalo and other Pittsburg-Buffalo common points b	3.20	2.76	2.29	1.87	1.57	1.62	1.28	1.03	.96	.86
New York and common points b	3.50	3.01	2.49	2.00	1.67	1.75	1.38	1.11	1.03	.93

a As designated in Transcontinental Freight Bureau Westbound Tariff 1-K, I. C. C. No. 920.

b As designated in Nor. Pac. No. 22500, I. C. C. No. 3205.

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And that for the future no higher rates than those set forth below should be charged to Winnemucca and points east thereof to the Nevada-Utah state line:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Denver and other points in Group J a.....	\$2.00	\$1.72	\$1.46	\$1.26	\$1.06	\$1.06	\$0.83	\$0.67	\$0.63	\$0.57
Grand Island and other points in Group G a.....	2.19	1.90	1.60	1.38	1.16	1.16	.91	.72	.69	.62
Omaha and other points in Group F a.....	2.38	2.06	1.74	1.50	1.26	1.26	.99	.79	.75	.67
Clinton and other points in Group E a.....	2.66	2.30	1.93	1.62	1.36	1.39	1.08	.86	.82	.74
Chicago and other points in Group D a.....	2.75	2.38	1.99	1.66	1.40	1.43	1.07	.89	.85	.76
Toledo and other Cincinnati-Detroit common points b.....	2.90	2.50	2.08	1.72	1.44	1.48	1.17	.93	.87	.79
Buffalo and other Pittsburg-Buffalo common points b.....	3.04	2.62	2.18	1.78	1.49	1.44	1.22	.98	.91	.82
New York and common points b.....	3.33	2.86	2.37	1.90	1.59	1.66	1.31	1.05	.98	.88

a As designated in Transcontinental Freight Bureau Westbound Tariff 1-K, I. C. C. No. 920.

b As designated in Nor. Pac. No. 23500, I. C. C. No. 3295.

In directing the carriers to establish these class rates we have taken into consideration the fact that the general policy of the carriers is to make commodity rates somewhat lower than class rates on commodities, the movement of which is regarded as necessary to the development of mercantile interests and industries. There are at present, as we have seen, a considerable number of such commodity rates into Reno, but these are entirely insufficient to meet the needs of Nevada if she is to become in any way an independent business community. There is no foundation in the record in this case for the establishment of such commodity rates. The theory upon which the case was presented eliminated all other considerations excepting the claim that all rates extended to Sacramento were reasonable as to Reno and other Nevada points. The Nevada petition was tantamount to a request that under our legal authority to establish reasonable rates we should fix the same rate from Denver as from Boston. We do not so construe our authority as to permit this Commission to make rates upon such a basis. Without doubt the commodity rates made to the coast terminals are reasonable from a great portion of eastern defined territory, but a governmental authority may not exercise the latitude in fixing a rate blanket which the carriers themselves have here exercised.

In the *Spokane case*, 19 I. C. C. Rep. 162, some 600 commodity rates had been established voluntarily by the carriers, and the petition in that case was for the reduction of those rates to a reasonable figure. The carriers had made a special series of zones across the continent to meet the exigencies of the Spokane situation. In the case before us, however, no such favorable condition is presented. We have neither a schedule of commodity rates with which to deal as to which specific complaint is made, nor have the carriers so divided the continent into

groups of originating territory, save in the sense that the transcontinental groups to the coast terminals, which are entirely different from those found in the *Spokane case*, *supra*, furnish a foundation for present combination rates to western Nevada.

In view of this situation we shall make no order as to commodity rates in this case at the present time, but shall direct the carriers to make a record of all shipments into Nevada from eastern defined territory during the months of July, August, and September, 1910, or during such other representative months as may be determined upon by the Commission after conference with the carriers, and furnish the Commission with a statement showing as to each shipment the following facts:

(1) The commodity; (2) the weight, carload or less than carload; (3) point of origin and the transcontinental territorial group in which the same is situated; (4) rate that would be applied under the tariffs in effect July 1, 1910; (5) the gross charges thereunder; (6) the rate applicable under the order made in this case; (7) the gross charges thereunder; (8) the rate that would be applied were the movement to Sacramento; (9) the gross charges thereunder.

The complainant will be ordered in this case, on or before October 1, 1910, to furnish to the Commission and to the defendant Southern Pacific Company a list of commodities upon which commodity rates are desired, together with an outline of the various territories or groups from which commodity rates should apply.

We are of the opinion that justice can not be done to Nevada unless Nevada points are put on a practical parity with points in eastern Washington and eastern Oregon, and a further hearing will, in due course, be held after the data here requested have been furnished by carriers and complainant.

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No. 1796.

MARICOPA COUNTY COMMERCIAL CLUB

v.

SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY
ET AL.

Submitted October 20, 1909. Decided June 6, 1910.

Class rates from points within eastern defined territory between the Missouri River and the Pittsburg-Buffalo line to Phoenix, Ariz., found unreasonable; reasonable rates prescribed for the future.

E. P. Costigan and F. A. Jones for complainant.

F. C. Dillard, P. F. Dunne, and C. W. Durbrow for Southern Pacific Company, Maricopa & Phoenix Railroad Company, Phoenix & Eastern Railroad Company, and Galveston, Harrisburg & San Antonio Railway Company.

T. J. Norton, E. W. Camp, L. H. Chalmers, and Paul Burke for Atchison, Topeka & Santa Fe Railway Company and Santa Fe, Prescott & Phoenix Railway Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

O. E. Butterfield for New York Central Lines.

George E. Tralles for Arizona Commercial Association, intervener.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Phoenix, Ariz., herein asks for the establishment of class rates to that city from points within eastern defined territory lying between the Missouri River and the Pittsburg-Buffalo line. The present rates, which are complained of as unreasonable, are set forth in the following table:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Kansas City.....	\$3.41	\$2.98	\$2.68	\$2.16	\$1.90	\$1.90	\$1.63	\$1.37	\$1.15	\$1.07
St. Louis.....	3.41	2.98	2.75	2.21	1.95	1.97	1.63	1.39	1.15	1.07
Chicago.....	3.61	3.14	2.87	2.26	2.00	2.05	1.71	1.46	1.21	1.12
Cincinnati.....	3.61	3.14	2.87	2.31	2.02	2.06	1.71	1.46	1.21	1.12
Pittsburg.....	3.91	3.43	3.07	2.44	2.14	2.17	1.79	1.54	1.31	1.22

After full hearing and an extensive investigation we are of opinion that the class rates set forth in the foregoing table are unreasonable and unjust, and that for the future no higher rates should be charged than are set forth below:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Kansas City.....	\$2.50	\$2.17	\$1.83	\$1.68	\$1.33	\$1.33	\$1.04	\$0.83	\$0.79	\$0.71
St. Louis.....	2.80	2.42	2.08	1.71	1.43	1.46	1.14	.91	.86	.78
Chicago.....	2.90	2.51	2.09	1.75	1.47	1.50	1.18	.94	.89	.80
Cincinnati.....	3.06	2.68	2.19	1.81	1.52	1.56	1.23	.96	.92	.86
Pittsburg.....	3.20	2.76	2.29	1.87	1.57	1.62	1.28	1.03	.96	.86

Phoenix enjoys at present commodity rates upon a considerable number of commodities but complainant herein sets forth a large number of commodities upon which rates are asked which shall not exceed those extended to Los Angeles. The class rates above fixed will affect all of these commodities, and before proceeding further we shall direct the carriers to make a record of all shipments from eastern defined territory to all points in Arizona east of, or intermediate to, Phoenix, during the months of July, August, and September, 1910, or during such other representative months as may be determined upon by the Commission after conference with the carriers, and to furnish the Commission with a statement showing as to each shipment the following facts: (1) The commodity; (2) the weight, carload or less than carload; (3) point of origin and the transcontinental territorial group in which the same is situated; (4) rate applicable under the tariffs in effect July 1, 1910; (5) the gross charges thereunder; (6) the rate applicable under the order made in this case if extended to all points in Arizona east of and intermediate to Phoenix; (7) the gross charges thereunder; (8) the rate that would be applied were the movement to Los Angeles; (9) the gross charges thereunder.

The complainant will be required to furnish to the Commission on or before October 1, 1910, and to the delivering carriers, the Maricopa & Eastern and the Santa Fe, Prescott & Phoenix, a list of commodities upon which commodity rates are desired, together with an outline of the various territories or groups from which rates should apply. In this case, as in the *Reno case*, 19 I. C. C. Rep. 238, we are of the opinion that the carriers should extend to Phoenix and other points in Arizona a reasonable list of commodity rates adapted to the needs of that territory and in substantial conformity with the rates made on the same commodities to other intermountain points on lines to the north.

19 I. C. C. Rep.

No. 2839.

TRAFFIC BUREAU OF THE MERCHANTS' EXCHANGE OF
SAN FRANCISCO, CAL.,

v.

SOUTHERN PACIFIC COMPANY.

Submitted February 11, 1910. Decided June 6, 1910.

Class rates from Sacramento, Cal., to points upon the main line of the Southern Pacific Company between Reno, Nev., and Cecil Junction, Utah, inclusive, found excessive; reasonable rates prescribed for the future.

Seth Mann and William R. Wheeler for complainant.

F. C. Dillard, P. F. Dunne, and C. W. Durbrow for defendant.

George J. Bradley for intervener.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The reasonableness of the class rates from Sacramento, Cal., eastward to all points upon the main line of the Southern Pacific Company in the states of Nevada and Utah up to but not including Ogden are attacked in this complaint. These rates from Sacramento to Reno, a distance of 154 miles, are as follows:

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	129	113	102	87	78	78	34	33½	25½	25½

The rates gradually increase from Reno eastward until at Moline, Nev., the first class rate is \$1.72½, which rate obtains as a maximum up to Cecil Junction, Utah, 1 mile west of Ogden. The Sacramento-Ogden rates are on a lower scale, being—

Class....	1	2	3	4	5	A	B	C	D	E
Rate....	154	131	115	96	79½	79½	62	56	38	31½

An examination of the tariffs on file with this Commission fails to show a scale of rates as high as that obtaining between Sacramento and Reno on any other main line in the United States. There are a few rates between interior mountain points which are almost as high.

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Comparisons given in the record between first class rates between different points follow:

Comparison of first class rates.

From—	To—	Distance.	Class 1.	Average rate per ton per mile of all 10 classes.
		Miles.	Cents.	Cents.
Sacramento.....	Reno, Nev.....	154	129	9.16
Denver.....	Leadville, Colo.....	276	100	3.84
Do.....	Ogden, Utah.....	779	154	2.16
Portland.....	Pocatello, Idaho.....	781	209	3.04
Salt Lake.....	do.....	171	55	3.70
Do.....	Huntington, Oreg.....	498	150	3.71
El Paso.....	Yuma, Ariz.....	562	190	4.13
Omaha.....	Kimball, Nebr.....	451	125	2.77
Do.....	Ogden, Utah.....	1,000	205	2.34
Sacramento.....	Ashland, Oreg.....	841	154	5.62
Portland.....	do.....	841	123	4.30
Los Angeles.....	Fresno, Cal.....	275	80	3.94
Do.....	Tucson, Ariz.....	508	190	4.54
Do.....	Bakersfield.....	168	71	5.53
Sacramento.....	Cottonwood, Cal.....	151	62	5.35
Portland.....	Divide, Oreg.....	149	56	4.68
Los Angeles.....	Ilmott, Cal.....	150	71	3.00
Denver.....	Newett, Colo.....	144	95	7.14
Spokane.....	Thompson Falls, Mont.....	154	67	5.06
Portland.....	Heppner Junction.....	152	82	5.72
Seattle.....	Leavenworth, Wash.....	142	78	5.66
Tacoma.....	Yacolt, Wash.....	156	55	4.08
Los Angeles.....	Daggett, Cal.....	169	98	7.77
Daggett.....	Sloan, Nev.....	157	84	5.75
San Diego.....	Pasadena, Cal.....	186	18	1.97
Kansas City.....	Chapman, Nebr.....	152	60	4.16
Chicago.....	Panama, Iowa.....	446	80	1.63
Do.....	Jackson, Minn.....	446	65	1.38
Do.....	Sugar Creek, Mo.....	447	50	1.23
Do.....	Turney, Mo.....	444	80	1.64
Do.....	Solon Springs, Wis.....	447	65	1.34
Kansas City.....	Cheyenne Wells, Colo.....	463	95	2.37
Omaha.....	Kimball, Nebr.....	451	125	2.77
Texas distance.....		440	101	2.79
Iowa distance.....		440	63	1.47

It costs a shipper at Sacramento \$1.29 to send 100 pounds of first class freight from Sacramento to Reno, a distance of 154 miles. For less than this charge a shipper at New York may send the same package to St. Paul, Minn., and beyond, a distance of 1,500 miles; or for \$1.33 a shipper at Galveston may send the same package to Guthrie, Okla., a distance of 583 miles. The same package will be carried from Louisville, Ky., to Rigolets, La., for \$1.19, a distance of 780 miles, or from Kansas City to Temple, Tex., 630 miles, for \$1.27. For the same \$1.29 or less one may have 100 pounds of first class freight transported from Chicago to Jackson, Miss., 738 miles; from Denver to Simmons, Tex., 457 miles; from Portland, Oreg., to Keystone, Wash., 489 miles; from Norfolk, Va., to Arlington, Ala., 912 miles; from Ogden, Utah, to Caldwell, Idaho, 431 miles. In short, the class rates eastbound out of Sacramento are practically without precedent or parallel.

The one justification given for a scale of rates so high is that the road between Sacramento and Reno was exceptionally expensive to build

and is expensive to maintain and operate. This is so because it has a heavy grade—2.2 per cent. It passes through a total of nearly a mile and a half of tunnel, and is covered by 30 miles of snowsheds over the Sierras. It is said that it costs an average of \$7,000 a mile per year to maintain these snowsheds. The lift over the Sierra Nevada Mountains from Sacramento to Reno is approximately 7,000 feet, which is made on a grade of 2.2 per cent. Over the Siskiyou Mountains, dividing California and Oregon, a train must be lifted 4,135 feet upon a grade of 3.3 per cent, while over the Tehachapi Mountains, in southern California, between Los Angeles and Bakersfield, the elevation is 4,035 feet, which is made on a grade of 2.2 per cent and with an extremely high curvature. The first class rate from Los Angeles to Bakersfield, as shown by the table quoted above, is 71 cents. This rate is at present under attack as to its reasonableness before the state railroad commission of California. The rate from Sacramento to Ashland, which is to the north of the Siskiyou Mountains a distance of 341 miles, is \$1.54.

It was urged upon the hearing that a haul of 154 miles over the Sierras was equivalent to 444 miles of level haul. Just what the precise meaning of this position is we can not clearly learn from the record, but if it is presented as a reason for justifying the \$1.29 rate under such exceptional conditions it would be fair to assume that such a rate would not be imposed under conditions much less disadvantageous. Nevertheless, we find that out of Reno eastward for a distance of 154 miles, an almost level haul, the first class rate is \$1.11. Moreover, lower first class rates for a distance of 440 miles are not difficult to find on roads which have a much less density of traffic than that portion of defendant's railroad extending from Sacramento to Ogden, Utah (hereinafter called the Central Pacific), which in 1907 hauled 1,047,136 tons of freight per mile. We do not recognize the right of a carrier to single out a piece of expensive road and make the local traffic thereon bear an undue portion of the expense of its maintenance or of its construction. A road is built and operated as a whole, and local rates are not to be made with respect to the difficulties of each particular portion, charging the cost of a bridge to the traffic of one section or the cost of a tunnel to traffic between its two mouths. Upon this same road millions of dollars have recently been expended in building the Lucin cut-off just west of Ogden, a monumental bit of construction which traverses the Great Salt Lake. If rates from one side of the lake to the other were based upon the cost of this cut-off they would be unconscionable. If the position of the defendant were followed by the carriers generally (which it is not, nor even by itself) it would result in rates that would vary from mile to mile as the cost of road per mile varies.

The Central Pacific makes no separate operating report to the Commission, and we therefore have no official statistics of that company as distinguished from the Southern Pacific. However, in this case and the several cases now before the Commission involving Pacific coast rates, many statistics have been furnished by complainants and defendants.

It is generally contended in the western country that rates are high because traffic is light and that the earnings do not compare favorably with those of eastern carriers. What is known as the "Seger affidavit," filed in the *Reno case*, 19 I. C. C. Rep. 238, and above referred to, shows that the Central Pacific in 1907 hauled 1,047,136 tons of freight per mile as compared with 606,779 tons for Group X, in which is comprised the Central Pacific, and compared with 659,235 for Groups VI to X, embracing all the country west of Chicago and the Mississippi River. The Central Pacific, a single-track carrier, carried more tons per mile than any of the transcontinental carriers except the Union Pacific and the Oregon Short Line, which carried about the same. It carried almost exactly the average for the United States. The figures above appear in the table which follows. From this it is learned that the freight earnings per mile of road for the Central Pacific for 1907 were \$13,453.80, which is greater than that of any other carrier set forth in the table, 65 per cent greater than the average for the United States, nearly 100 per cent greater than the average for Group X, and over 100 per cent greater than the average for all roads west of Chicago and the Mississippi River. It will be noted that these earnings are almost double those of the Atchison, Topeka & Santa Fe, one of its active competitors, and that road penetrates the dense freight territory lying between Kansas City and Chicago.

Year ending June 30, 1907.

Name of road.	Tons carried 1 mile per mile of road.	Freight earnings per mile of road.
Atchison, Topeka & Santa Fe	821,068	\$7,009.95
Oregon Railroad & Navigation Co.	609,984	7,181.80
Denver & Rio Grande	452,482	6,092.05
Oregon Short Line	1,075,434	9,224.21
Union Pacific	1,146,918	11,000.36
Northern Pacific	1,011,164	8,798.33
Great Northern	941,512	7,121.97
Chicago Burlington & Quincy	802,722	6,825.54
Chicago & North Western	718,982	6,555.09
Chicago, Rock Island & Pacific	549,955	5,239.32
San Pedro, Los Angeles & Salt Lake	278,955	3,955.05
St. Louis & San Francisco	540,426	5,354.98
Southern Pacific	768,059	8,722.35
Central Pacific	• 1,047,136	• 13,453.80
Group X	606,779	7,189.09
Groups VI, VII, VIII, IX, and X	659,235	6,946.05
United States	1,052,119	8,122.08

• Figures taken from Klink exhibit.

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The operating officials of the Central Pacific testified in this case that the road was now doing the maximum business which could be done economically. In other words, that an increase in business would add to the expense per unit of operation. Not being in a position to urge that a reduction in rates was unjustifiable because of the lightness of its traffic, the defendant here contends that the Commission would not be justified in reducing the rate because business would increase and thereby the expense of performing the service would increase. The contention seems to be that the Commission must not reduce the rate when the traffic is light, and when the traffic is heavy it must not reduce the rate because it will increase the cost of operation.

Some of the per-ton-per-mile rates ascertained from statistics furnished in the several Pacific coast cases now before us are as follows:

Date	Road.	Rate per ton per mile in mills.	Average haul.
1909.....	Southern Pacific ^a	12.11	260.00
1909, February.....	Central Pacific transcontinental business (through) ^b	10.44	786.00
1908.....	Central Pacific: Sacramento to Reno ^c —		
	Carloads ^d	63.38	154.00
	L. C. L. ^e	181.00	154.00
	C. L. and L. C. L. ^f	74.67	154.00
1908.....	Average on all roads in the United States ^g	7.59	268.94

^a From annual report of company.

^b From exhibit of Southern Pacific in *Reno* case, showing 60,271 tons through business east and west between Ogden and California, on which revenue was \$495,123.37, or \$8.21 per ton, and the mileage, Ogden to San Francisco, is 786, making rate per ton per mile 10.44 mills. Some of this business stopped at Sacramento, which, being only 696 miles from Ogden, would tend to increase the rate per ton per mile, while business passing off the main line, being hauled a longer distance, would tend to decrease same.

^c Compiled from exhibits in *Reno* case where billing of all freight into Reno was analysed and carloads and less than carloads, Sacramento to Reno, 154 miles, tonnage and revenue stated.

^d Same as (c), tonnage, 5,723; revenue, \$55,908.10; per ton, \$9.76; rate per ton per mile, 63.38 mills.

^e Same as (c), tonnage, 1,134; revenue, \$22,872.18; per ton, \$20.17; rate per ton per mile, 181 mills.

^f Average (c) and (e), tonnage, 6,857; revenue, \$78,778.28; per ton, \$11.49; rate per ton per mile, 74.67.

^g Interstate Commerce Commission report.

The rate per ton per mile on the Southern Pacific in 1900 was 1.149 cents and in 1909 1.211 cents, an increase of 5 per cent. The assistant general manager for the Southern Pacific Company testified that any unit of freight could at the present time be moved more cheaply over the Central Pacific between Sacramento and Reno than it could ten years ago.

That an immense business is done over defendant's line from Sacramento to Reno is evidenced not only by the statement of 1,047,136 tons per mile of road in 1907 but further by the testimony of the assistant general manager of the Southern Pacific that twice as much business is done there as over the Tehachapi Pass between Los Angeles and Bakersfield, where the rate is 71 cents, first class, and the elevation 4,000 or 5,000 feet. The same witness testified that from 200 to 300 cars per day move over the Sacramento-Reno line as compared

with 75 to 100 over the Siskiyou Mountains, where the average rate per ton per mile is 5.62 cents as compared with Sacramento-Reno, 9.16 cents, and the elevation is 4,100 feet, while over the Sacramento-Reno line it is 7,000 feet.

The main line of the Central Pacific is fed east of Sacramento in California by several small lines: The Portland line of the Central Pacific, which meets the Ogden line at Roseville; farther east by the Boca and Loyalton line, the Nevada County Narrow Gauge, which runs from Colfax to Nevada City, and the Lake Tahoe Transportation Company's line. In Nevada, by the Virginia and Truckee line, operating between Reno and Virginia City and Carson; the Nevada-California-Oregon Railway, operating between Reno and Alturas, Cal.; and the Nevada and California Railway, running from Hazen south in Nevada, which latter road is a Southern Pacific property, and which reaches down to a Tonopah and Goldfield connection, and into California again as far south as Keeler; the Derby and Wadsworth branch; Hazen to Eagle Salt Works; Hazen to Fallon; the Nevada Central from Battle Mountain to Austin; the Eureka & Palisade from Palisade to Eureka; and the Nevada Northern from Cobre to Ely.

We have given much consideration to this case, having before us similar cases involving rates out of Portland, Seattle, and Tacoma, and our conclusion is that the class rates herein involved are excessive and unreasonable and should be materially reduced.

We are of the opinion that the class rates to Reno and all stations east thereof up to and including Lovelock from Sacramento should not exceed the following in cents per 100 pounds:

Class....	1	2	3	4	5	A	B	C	D	E
Rate	85	71	64	51	43	43	34	28	25	21

We are further of the opinion that reasonable class rates from Sacramento to points east of Lovelock, to and including Elko should not exceed the following:

Class....	1	2	3	4	5	A	B	C	D	E
Rate	115	96	86	69	57½	57½	46	38	34½	29

And to points east of Elko, to and including Cecil Junction, Utah—

Class....	1	2	3	4	5	A	B	C	D	E
Rate	154	128	115½	92	77	77	62	51	46	38½

The rates herein prescribed will be governed by the Western Classification.

An order will be entered accordingly.

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No. 2537.

PORTLAND CHAMBER OF COMMERCE

v.

OREGON RAILROAD & NAVIGATION COMPANY ET AL.

No. 2545.

TRANSPORTATION BUREAU OF SEATTLE CHAMBER OF
COMMERCE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted January 18, 1910. Decided June 7, 1910.

Defendants' interstate class rates from Seattle, Tacoma, and Portland to points in Washington, Oregon, Idaho, and Montana found unreasonable and reduction of 20 per cent in said rates proposed.

Teal, Minor & Winifree for complainants.

W. A. Mears for Seattle Chamber of Commerce.

J. E. Belcher for Tacoma Traffic Association.

Fred Pugh, E. O. Connor, and H. M. Stephens for City of Spokane, County of Spokane, Spokane Chamber of Commerce, and Spokane Jobbers' Association, interveners.

H. M. Stephens for Walla Walla Commercial Club, intervener.

Hale Holden, Pierce Butler, C. G. Davies, and W. R. Begg for Great Northern Railway Company.

Charles W. Bunn and Charles Donnelly for Northern Pacific Railway Company.

F. C. Dillard and W. W. Cotton for Oregon Railway & Navigation Company; Oregon Short Line Railroad Company; Oregon, Washington & Idaho Railroad Company; and Union Pacific Railroad Company.

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REPORT OF THE COMMISSION.

KNAPP, *Chairman:*

The first of the above-entitled proceedings is brought by the Portland Chamber of Commerce, an organization whose membership includes representatives of the commercial interests of the city of Portland and state of Oregon; the second by the Transportation Bureau of the Seattle Chamber of Commerce and the Tacoma Traffic Association, representing like interests in the cities of Seattle and Tacoma, and the state of Washington. The complaints allege in substance that the class rates established by defendants for transportation eastbound from Portland to points in Washington, Idaho, and Montana, and from Seattle and Tacoma to points in Oregon, Idaho, and Montana are unreasonable, and subject the interests represented by complainants to undue disadvantage as compared with shippers and jobbers at eastern and middle western points.

Although the allegation in respect of discrimination is contained in the complaints, it was repeatedly asserted by counsel for complainants that their only claim for relief is upon the ground that the rates in controversy are unreasonable in and of themselves; and as substantially all the testimony was offered to support or disprove that allegation, the record would not warrant a finding in respect of the discrimination alleged.

Under the rates attacked by far the greater proportion of the shipments of merchants and manufacturers of the northwestern coast cities are made, in less-than-carload quantities, to points in the states mentioned, and most of the merchandise shipments are included in the first four classes. Therefore, although under the Western Classification there are 10 classes (5 numbered and 5 lettered) with rates applicable thereto, the rates particularly dwelt upon in these proceedings are those applying to classes 1, 2, 3, and 4.

The evolution and development of the North Pacific coast states, particularly during the past ten years, has resulted in commercial conditions different from those which prevailed prior to that time. At first commerce was confined almost solely to distributors and consumers of products manufactured elsewhere, and manufacturing was limited both in volume and variety. Now manufacturing industries and coast products have grown to considerable proportions. It is asserted by complainants that this growth has been limited by a rate situation which has confined sales on the part of jobbers and manufacturers to an unduly restricted territory adjacent to the coast, except where production is limited to what might be termed the first stages of manufacture, as in the lumber industry, and in certain other lines of production wherein the coast has a natural monopoly, as in the canned salmon industry.

While the defendants in each proceeding are different, and portions of their lines serve different territories, with operating conditions to some extent dissimilar, yet the relief asked for being substantially the same, the Commission ordered the cases heard and argued together, and they may conveniently be disposed of in one report. In fact, commercial conditions are such that, to a considerable extent, any relief granted to one of the coast cities would probably be given by the carriers to the others. For example, the Oregon Railroad & Navigation Company extends, by one of its lines, from Portland to Spokane. If the Oregon Railroad & Navigation rates from Portland to Spokane are reduced, it follows that the rates of Great Northern and Northern Pacific, reaching that point from Tacoma and Seattle, must be correspondingly reduced if those carriers desire to secure a portion of the Spokane traffic. So it follows that any change in the existing interstate rates of which complaint is made will probably require a corresponding change in certain intrastate rates. It may also be noted in passing that the action of either the Oregon or Washington state railroad commissions upon certain intrastate rates is, by force of competitive conditions, reflected in corresponding interstate rates in the territory in question.

For convenient reference, a number of the rates complained of with the resulting revenue per ton per mile, are here set forth:

I. *Class rates, in cents per 100 pounds, and cents per ton per mile, from Seattle and Tacoma, Wash., to various representative points east thereof on the Northern Pacific Railway.*

Distance.	Rate to—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Miles.		Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
426	Rathdrum, Idaho:										
	Per 100 pounds	137	120	96	82	69	69	55	47	36	27
	Per ton per mile	6.43	5.63	4.50	3.85	3.21	3.21	2.58	2.20	1.69	1.27
446	Granite, Idaho:										
	Per 100 pounds	143	122	100	86	72	72	57	49	36	29
	Per ton per mile	6.41	5.47	4.48	3.84	3.22	3.22	2.55	2.22	1.61	1.30
508	Casaya, Mont.:										
	Per 100 pounds	162	138	113	97	81	81	65	56	41	32
	Per ton per mile	6.37	5.43	4.44	3.81	3.18	3.18	2.55	2.20	1.61	1.26
567	Woodlin, Mont.:										
	Per 100 pounds	170	145	118	101	85	84	68	52	43	33
	Per ton per mile	6.10	5.20	4.23	3.62	3.05	3.01	2.44	1.87	1.54	1.18
598	Parma, Mont.:										
	Per 100 pounds	188	160	132	113	94	93	75	62	47	37
	Per ton per mile	6.28	5.35	4.41	3.78	3.14	3.12	2.50	1.74	1.57	1.23
672	McQuarrie, Mont.:										
	Per 100 pounds	210	179	147	126	105	105	84	74	53	42
	Per ton per mile	6.25	5.32	4.37	3.12	3.12	3.12	2.50	2.20	1.57	1.25
738	Bradley, Mont.:										
	Per 100 pounds	210	180	145	125	105	105	85	64	53	42
	Per ton per mile	5.70	4.87	3.92	3.33	2.84	2.84	2.30	1.73	1.43	1.13

II. Class rates, in cents per 100 pounds, and cents per ton per mile, from Seattle, Wash., to various representative points east thereof on the Great Northern Railway.

Distance.	Rate to—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Miles.		Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
407	Wrecoee, Idaho:										
	Per 100 pounds	149	127	104	80	75	75	60	49	37	29
	Per ton per mile	7.32	6.24	5.11	4.37	3.68	3.68	2.94	2.40	1.81	1.43
448	Bonniers Ferry, Idaho:										
	Per 100 pounds	158	134	111	95	79	79	63	54	40	32
	Per ton per mile	7.05	6.00	4.95	4.24	3.52	3.52	2.81	2.41	1.78	1.42
508	Jennings, Mont.:										
	Per 100 pounds	171	145	120	103	86	86	68	60	43	34
	Per ton per mile	6.73	5.70	4.72	4.55	3.38	3.38	2.67	2.36	1.69	1.23
557	Shields, Mont.:										
	Per 100 pounds	181	154	127	109	91	91	73	64	46	36
	Per ton per mile	6.50	5.52	4.56	3.91	3.26	3.26	2.58	2.29	1.61	1.20
602	Lupfer, Mont.:										
	Per 100 pounds	191	162	134	115	96	96	77	64	48	38
	Per ton per mile	6.34	5.38	4.45	3.82	3.18	3.18	2.55	2.12	1.59	1.26
654	Garry, Mont.:										
	Per 100 pounds	200	170	140	120	100	100	80	64	50	40
	Per ton per mile	6.11	5.20	4.28	3.66	3.05	3.05	2.44	1.95	1.53	1.22
672	Highgate, Mont.:										
	Per 100 pounds	205	174	144	123	103	103	82	64	51	41
	Per ton per mile	6.10	5.20	4.28	3.66	3.05	3.05	2.44	1.90	1.52	1.22
738	Opal, Mont.:										
	Per 100 pounds	210	180	145	125	105	105	85	64	53	43
	Per ton per mile	5.69	4.87	3.92	3.38	2.84	2.84	2.30	1.73	1.44	1.14

III. Class rates, in cents per 100 pounds and cents per ton per mile, from Portland, Oreg., to various representative points east thereof on the lines of the Oregon Railroad & Navigation Company and Oregon Short Line Railroad Company.

Distance.	Rates to—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Miles.		Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
229	Snake River, Wash.:										
	Per 100 pounds	103	88	72	62	49	49	41	31	26	21
	Per ton per mile	8.99	7.68	6.26	5.38	4.26	4.26	3.56	2.68	2.27	1.82
253	Scott, Wash.:										
	Per 100 pounds	113	95	79	68	54	54	45	34	28	23
	Per ton per mile	8.93	7.62	6.24	5.37	4.26	4.26	3.56	2.69	2.21	1.82
319	Winona, Wash.:										
	Per 100 pounds	130	115	90	80	65	60	50	41	33	26
	Per ton per mile	8.15	7.21	5.64	5.01	4.07	3.76	3.13	2.56	2.07	1.68
337	St. John, Wash.:										
	Per 100 pounds	132	117	92	80	65	61	51	41	33	26
	Per ton per mile	7.82	6.94	5.46	4.74	3.86	3.62	3.03	2.42	1.95	1.54
358	Oakdale, Wash.:										
	Per 100 pounds	135	120	95	80	65	65	55	44	36	26
	Per ton per mile	7.54	6.70	5.30	4.47	3.63	3.63	3.07	2.46	2.01	1.45
412	Chester, Wash.:										
	Per 100 pounds	135	120	95	80	65	65	55	44	36	26
	Per ton per mile	6.55	5.82	4.61	3.88	3.15	3.15	2.67	2.13	1.74	1.31
421	Spokane, Wash.:										
	Per 100 pounds	135	120	95	80	65	65	55	44	36	26
	Per ton per mile	6.41	5.70	4.51	3.61	3.08	3.08	2.61	2.09	1.71	1.23
486	Nampa, Idaho:										
	Per 100 pounds	148	137	120	114	90	80	65	60	50	37
	Per ton per mile	6.09	5.63	4.98	4.69	3.70	3.29	2.67	2.47	2.05	1.62
541	Mountain Home, Idaho:										
	Per 100 pounds	201	177	148	128	105	94	79	64	53	41
	Per ton per mile	7.43	6.58	5.47	4.73	3.88	3.47	2.92	2.36	1.96	1.51
623	Shoshone, Idaho:										
	Per 100 pounds	209	177	152	131	109	94	79	64	53	44
	Per ton per mile	6.38	5.68	4.88	4.20	3.80	3.01	2.53	2.05	1.70	1.41
672	Minidoka, Idaho:										
	Per 100 pounds										
	Per ton per mile	6.22	5.26	4.52	3.90	3.24	2.79	2.35	1.90	1.57	1.21
731	Pocatello, Idaho:										
	Per 100 pounds										
	Per ton per mile	5.72	4.84	4.16	3.58	2.98	2.57	2.16	1.75	1.45	1.20

The rates above set forth are considerably higher than the class rates applicable westbound for similar distances from the eastern terminals of the Northern Pacific, Great Northern, and Union Pacific.

Considerable testimony was offered by jobbers and manufacturers in Portland, Seattle, and Tacoma to show to what extent the territory in which they can sell their products, under the present rates, is limited. The distance east from the coast in which they can sell in competition with firms in the east and middle west varies with the several industries. A fabricator of structural steel testified that the sale of goods manufactured in Portland is, in a general way, limited to territory about 200 miles east, 100 miles north, and halfway to San Francisco on the south. So far as jobbers and wholesale merchants in the three cities are concerned, the record shows that they can sell goods to points about 100 miles west of Spokane, and east on the Oregon Railroad & Navigation and Oregon Short Line as far as Arcadia, which is about midway between Portland and Salt Lake City. In other words, it appears that, with certain exceptions, the coast jobbers can sell their goods east on defendants' lines about to the eastern boundary of Washington and Oregon. Within this territory, however, there are certain sections in which they can not compete. It was found in *City of Spokane, Wash., v. N. P. Ry. Co.*, 15 I. C. C. Rep., 376, that about five years ago an adjustment of rates into and out of Spokane was established, the conceded effect of which was to pass over to the Spokane jobbers a territory surrounding Spokane about 100 miles in extent to the east and to the south, including the Palouse country upon the north of the Snake River.

As has been noted, Portland can sell to points about halfway to Salt Lake City. East thereof on the Oregon Short Line, the Salt Lake City jobber has an advantage in freight rates. At smaller cities in the northwest, such as Baker City, Walla Walla, and Lewiston, jobbing houses have been established which to a considerable extent control the business in the communities in which they are located, and can sell, in competition with Seattle, Tacoma, and Portland, at points within a radius of about 30 miles. Other things being equal, it would be obvious that the coast cities could sell on the several lines to the points where the carload rate to the coast, plus the less-than-carload rate back, equals the less-than-carload rate from the middle western jobbing center. There are a great many conditions, however, which tend to modify the application of that principle. The jobbers testified that from 50 to 75 per cent of the products sold by wholesale grocery houses originate on the coast, and hence do not pay a transcontinental rate to the coast. Manufacturing establishments have also been established on the coast, and their products are

not in all cases subject to a transcontinental rate upon the raw material. Furniture factories, for example, obtain most of their raw material near at hand, by rail or water, while fabricators of steel articles obtain from the east the material which they work into a finished product. Coast jobbers use the water routes from Atlantic seaboard points to such extent as may be practicable, and this effects a saving of about 20 per cent in comparison with the rail rates. Manufacturers on the coast, however, as compared with their eastern competitors, are at a certain disadvantage by reason of the higher unit cost of production, due to higher wage scales and other similar conditions. Many less-than-carload shipments of certain articles, such as furniture, are shipped from eastern points to intermountain territory in so-called "pool" cars, thereby obtaining the benefit of the carload rate for each of the several shipments in the car, whereas coast shippers are unable to operate eastward in that manner. It is also alleged that the minimum weights westbound operate to the advantage of the eastern shippers. Upon this record it can not be ascertained to what extent the conditions above outlined tend to restrict the selling territory of the coast cities, but it is certain that a number of circumstances, other than the distributive rates here in issue, have a substantial effect.

Defendants admit that these rates are relatively high, compared with rates westbound from their eastern termini, such as Minneapolis, St. Paul, and Omaha, and with other class rates in various sections of the country which are shown in complainants' exhibits. They assert, however, that when all the circumstances and conditions surrounding the movement of the traffic are considered, it is apparent that the rates do not constitute an excessive charge for the service rendered. In support of this position they offered considerable testimony and a number of exhibits, intended for the most part to show that the density of merchandise traffic westbound is much greater than that eastbound, and that in order to bear an equitable portion of the total transportation expense eastbound traffic should be charged higher rates.

The Great Northern Railway Company produced evidence in relation to its merchandise traffic from its eastern and western terminals. The record shows that for August, 1909, the number of merchandise cars carried west by the Great Northern from Minneapolis and St. Paul was 3,334, or an average of 123 cars per day, with an average weight of 16,000 pounds. This is all less-than-carload merchandise. From Seattle and Tacoma the total merchandise shipments for September, 1909, was 768 cars, an average of 29 cars per day, with an average weight per car of 9,172 pounds. The number of merchandise cars westbound from Minneapolis and St. Paul for the

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full year ended September 1, 1909, was 32,512, or an average for every working day of 104 cars per day, with an average tonnage per car of 15,800 pounds. About 20 carloads of merchandise per day are carried out of Portland by the Oregon Railroad & Navigation Company.

No figures in respect of density of merchandise traffic are submitted by the Northern Pacific. This road operates south of and through what might be termed central Washington, and serves the most productive region of that state and Idaho. The Northern Pacific is older than the Great Northern. It serves both Tacoma and Seattle, while it is only of late that the Great Northern has been a competitor out of Tacoma. Its lines cover the rich Umatilla section in Oregon, the Walla Walla, Palouse and Idaho territory, while the territory tributary to the Great Northern has not as yet been so fully developed. Counsel stated that the reason no figures were submitted on behalf of the Northern Pacific is that the great population along its line is in the state of Washington; that after passing out of that state the population is no greater than along the lines of the Great Northern; and that the business in Washington, being intrastate, was not a proper subject for consideration by the Commission. However that may be, it would appear that the Great Northern exhibit showing merchandise movement west from the Twin Cities includes state as well as interstate shipments. Two exhibits introduced at the hearing in the *Spokane case*, 19 I. C. C. Rep., 162, and stipulated into this record, indicate that the entire traffic moved eastward by the Northern Pacific from coast points is about four and one-half times as great as that which moved over the Great Northern during January and June, 1909. If this proportion held good as to merchandise shipments, it would indicate a movement eastward over the Northern Pacific almost as great as the westbound movement of merchandise from the Twin Cities over the Great Northern. We are inclined to doubt whether the same ratio between the two roads would prevail as to merchandise shipments, but it does seem certain that the Northern Pacific handles much more merchandise eastbound out of Seattle and Tacoma than the Great Northern.

On the whole, it can only be said that, under the circumstances of this case, the statistics in respect of density of merchandise traffic eastbound and westbound furnish an unsatisfactory basis for any sound conclusion. Complainants contend that the distributive rates are purposely placed at a point which will induce movement from the Middle West rather than from the coast. If this contention is sound, the traffic statistics would only tend to show that the rates have produced the desired effect.

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Both the Northern Pacific and Great Northern have virtually proposed to reduce their back haul interstate rates about 16½ per cent. That is to say, a reduction of 16½ per cent is proposed in the rate from the coast to Spokane, with smaller reductions, in percentage, graded back from Spokane to Seattle. To points beyond Spokane the exact percentage of reduction proposed has not been given. No such reduction has been offered from Portland by the Union Pacific lines, and they urgently deny the propriety of making any reduction in the back-haul rates. Under the proposed reduction by the Great Northern and Northern Pacific the rates from Seattle to Spokane would be as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Present rates	135	120	95	80	65	65	55	44	36	28
Proposed rates.....	112	95	79	67	54	54	46	37	29	22

The amount of the proposed reduction to points east of Spokane was not given, but for the purposes of this case we may assume that it would be 16½ per cent of the present class rates. Exhibits have been offered which indicate that this reduction, as applied to the present movement of traffic, would result in a loss of gross revenue per year of \$33,466.08 to the Great Northern and \$136,566.18 to the Northern Pacific. Complainants state that the reductions proposed are unsatisfactory to them for two reasons: First, that the rates proposed are excessive; second, that inasmuch as rates from the Twin Cities to Spokane and surrounding territory have been reduced 16½ per cent as a result of the Commission's order in the *Spokane case, supra*, a similar reduction of the eastbound class rates will leave the coast cities in substantially their present position in respect of their ability to meet eastern competition at points in Idaho, Montana, Oregon, and Washington.

The following tables are selected from those submitted by complainant, showing comparison of the rates in controversy with certain other rates claimed by complainant to apply to transportation under substantially similar circumstances in so far as the elements properly to be considered in establishment of rates is concerned:

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Comparative table, first four classes, between points named.

[Rates in cents per 100 pounds and in mills per ton per mile.]

Miles.	Road.	Direction.	From—	To—	1.		2.		3.		4.	
					Cents.	Mills.	Cents.	Mills.	Cents.	Mills.	Cents.	Mills.
477	O. R. & N. Co.	O. S. L.	Rate basis *	Caldwell, Idaho.	121	6.07	113	3.05	96	4.02	92	3.84
484	Union Pacific	West.	Portland.	Idaho.	145	6.08	135	3.66	115	4.82	110	4.61
487	Union Pacific	do.	Omaha.	Egbert, Wyo.	125	6.01	100	4.13	80	3.30	65	2.68
481	C. & N. W.	do.	Kansas City.	Kit Carson, Colo.	119	4.88	100	4.11	80	3.25	65	2.67
474	Great Northern	do.	Omaha.	Oelrichs, S. Dak.	120	4.99	107	4.45	92	3.82	77	3.20
477	Canadian Pacific	do.	Winnipeg.	Berwick, N. Dak.	110	4.38	88	3.71	72	3.04	57	2.40
474	Canadian Pacific	do.	Winnipeg.	Morse, Saskatchewan.	104	4.61	92	3.85	74	3.10	57	2.89
478	C. B. & Q.	do.	Omaha.	Crawford, Nebr.	122	5.10	111	4.64	98	4.10	85	3.65
473	C. B. & Q.	do.	Omaha.	Texhoma, Okla.	116	4.90	105	4.44	97	4.10	88	3.72
478	St. Louis & S. F.	South.	Kansas City.	Denison, Tex.	127	5.31	115	4.81	104	4.35	95	3.97
480	R. R. Comm. of Iowa		do.		65		49		39		34	
	R. R. Comm. of Ill.				49.6		41		33.1		26	
541	O. R. & N. Co.	O. S. L.	Rate basis *	Mormon Home, Idaho.	167.5	6.19	147.5	5.48	123	4.56	107	3.84
543	Union Pacific	West.	Portland.	Buford, Wyo.	201	7.43	177	6.58	145	6.47	128	4.73
533	C. & N. W.	do.	Omaha.	Hermosa, S. Dak.	150	5.52	122	4.49	99	3.28	77	2.83
560	Great Northern	do.	St. Paul.	Dickinson, N. Dak.	120	4.50	107	4.01	92	3.45	77	2.89
541	Great Northern	do.	Winnipeg.	Lone Tree, N. Dak.	127	4.53	108	3.85	88	3.14	71	2.63
545	Canadian Pacific	do.	Winnipeg.	Gull Lake, Saskatchewan.	112	4.14	95	3.51	78	2.88	62	2.29
531	C. B. & Q.	do.	Omaha.	Edgemont, S. Dak.	122	4.48	102	3.74	83	3.04	63	2.31
542	St. Louis & S. F.	South.	Kansas City.	Carrollton, Tex.	124	4.67	113	4.26	98	3.69	87	3.37
					127	4.68	115	4.24	104	3.83	95	3.50
633	O. R. & N. Co.	O. S. L.	Rate basis *	Shoshone, Idaho.	174	5.32	147.5	4.78	127	4.07	109	3.50
622	C. & N. W.	West.	Portland.	Lead, S. Dak.	209	6.38	177	5.68	152	4.88	131	4.20
624	Great Northern	do.	Omaha.	Beach, N. Dak.	129	4.28	112	3.72	97	3.22	81	2.69
627	Great Northern	do.	St. Paul.	Wheeler, N. Dak.	140	4.49	118	3.78	98	3.14	76	2.43
622	Canadian Pacific	do.	Winnipeg.	Walsh, Alberta.	131	4.21	111	3.56	92	2.95	72	2.31
624	C. B. & Q.	do.	Omaha.	Moorecroft, Wyo.	136	4.33	114	3.63	92	2.93	77	2.23
623	St. Louis & S. F.	South.	Kansas City.	Tolar, Tex.	170	5.45	150	4.80	127	4.07	110	3.52
					127	4.06	115	3.69	104	3.33	95	3.06
672	O. R. & N. Co.	O. S. L.	Rate basis *	Minidoka, Idaho.	174	5.18	147.5	4.38	127	3.77	109	3.25
673	Union Pacific	West.	Portland.	Colgate, Mont.	209	6.22	177	5.26	152	4.52	131	3.90
674	Great Northern	do.	St. Paul.	Snowden, Mont.	150	4.46	128	3.84	105	3.12	90	2.68
673	Canadian Pacific	do.	Winnipeg.	Bowling, Alberta.	148	4.30	124	3.68	103	3.06	85	2.52
671	C. B. & Q.	do.	Omaha.	Felix, Wyo.	140	4.16	117	3.47	94	2.79	72	2.13
672	St. Louis & S. F.	South.	Kansas City.	Proctor, Tex.	190	5.66	170	5.05	145	4.32	123	3.66
					127	3.84	115	3.43	104	3.09	95	2.83

* Rates on basis of 100 per cent reduction.

Comparative table, first four classes, between points named—Continued.

Mile	Road.	Direction.	From—	To—	1.		2.		3.		4.	
					Cents.	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.
731	O. R. & N. Co.	O. S. L.	Rate basis a.		174	4.77	147.5	4.03	127	3.47	109	2.98
734	Northern P. & Pac.	West.	Portland	Pocatello, Idaho.	209	5.72	177	4.84	152	4.16	131	3.58
733	Great Northern	do.	St. Paul.	Tulsa, Mont.	163	4.44	139	3.70	114	3.11	98	2.67
732	Canadian Pacific	do.	Minneapolis.	Poplar, Mont.	153	4.17	128	3.49	108	2.94	91	2.48
735	C. B. & Q.	do.	Winnipeg.	Assis, Alberta.	161	4.12	127	3.47	102	2.79	77	2.10
736	C. B. & Q.	do.	Omaha.	Verona, Wyo.	190	5.17	170	4.62	145	3.94	123	3.24
735	St. Louis & S. F.	South.	Kansas City.	Winchell, Tex.	127	3.45	115	3.12	102	2.83	95	2.58

a Rate on basis of 10¢ per cent reduction.

Statement showing comparison of class rates on first four classes, and rates in cents per ton per mile, for approximately equal mileage, on various roads, to points beginning at 106 miles and continuing at intervals of from 20 to 100 miles, until points are reached as far distant as 753 miles.

Miles.	Road.	Direction.	From—	To—	Class rates.				Rates in cents per ton per mile.			
					1.		2.		1.		2.	
					1.	2.	3.	4.	1.	2.	3.	4.
506	Northern Pacific		Rate basis	Idaho, Mont.	135	115	94	81	5.31	4.53	3.70	3.18
506	Great Northern		Tacoma and Seattle.	Idaho, Mont.	162	138	113	97	6.37	5.43	4.44	3.81
506	Great Northern		Seattle.	Idaho, Mont.	171	145	120	103	6.73	5.70	4.72	4.55
506	Union P. & Pac.	West.	Tacoma.	Idaho, Mont.	161	137	113	97	6.33	5.39	4.44	3.81
467	C. & N. W.	do.	Omaha.	Idaho, Mont.	125	100	80	65	5.01	4.13	3.20	2.66
477	C. & N. W.	do.	Kansas City.	Idaho, Mont.	119	100	80	65	4.99	4.11	3.20	2.67
474	Canadian Pacific	do.	Omaha.	Idaho, Mont.	120	107	92	77	4.98	4.45	3.82	3.20
477	Great Northern	do.	Minneapolis.	Idaho, Mont.	104	88	72	57	4.38	3.71	3.04	2.40
478	C. B. & Q.	do.	Winnipeg.	Idaho, Mont.	110	92	74	67	4.61	3.85	3.10	2.39
473	C. B. & Q.	do.	Omaha.	Idaho, Mont.	122	111	98	85	5.10	4.64	4.10	3.55
473	C. B. & Q.	do.	Kansas City.	Idaho, Mont.	116	105	87	85	4.90	4.44	4.10	3.72
478	St. L. & S. F.	South.	do.	Idaho, Mont.	127	115	104	95	5.31	4.81	4.35	3.97
537	Northern Pacific		Rate basis	Idaho, Mont.	142	121	98	84	5.08	4.33	3.53	3.02
537	Great Northern		Tacoma and Seattle.	Idaho, Mont.	170	145	118	101	6.10	5.20	4.23	3.62
537	Great Northern		Seattle.	Idaho, Mont.	181	154	127	108	6.50	5.52	4.54	3.91
533	Union Pacific	West.	Idaho, Mont.	Idaho, Mont.	172	146	120	103	6.17	5.24	4.30	3.70
533	C. & N. W.	do.	Omaha.	Idaho, Mont.	150	122	98	77	5.52	4.49	3.58	2.93
540	Northern Pacific	do.	St. Paul.	Idaho, Mont.	120	107	92	77	4.90	4.01	3.45	2.89
540	Northern Pacific	do.	St. Paul.	Idaho, Mont.	127	108	98	71	4.53	3.85	3.14	2.53

541	Great Northern.....	do.	Minnesota.....	112	96	78	63	4.14	3.51	2.86	2.20
542	Canadian Pacific.....	do.	Winnipeg.....	123	102	83	63	4.46	3.74	3.04	2.31
543	C., B. & Q.....	do.	Omaha.....	124	113	98	87	4.67	4.26	3.69	2.37
544	St. L. & S. F.....	South.	Kansas City.....	177	115	104	95	4.68	4.24	3.83	3.50
Rate basis a.											
545	Northern Pacific.....		Tacoma and Seattle.....	157	133	110	94	5.23	4.46	3.68	3.15
546	Great Northern.....		Seattle.....	186	160	132	113	6.28	5.35	4.41	3.78
547	Great Northern.....		Tacoma.....	191	162	134	115	6.34	5.38	4.45	3.82
548	C. & N. W.....	West.	Omaha.....	182	155	127	109	6.04	5.14	4.21	3.62
549	Northern Pacific.....	do.	St. Paul.....	129	112	97	81	4.28	3.72	3.22	2.69
550	Great Northern.....	do.	Minneapolis.....	140	118	98	76	4.48	3.78	3.14	2.43
551	Canadian Pacific.....	do.	Winnipeg.....	131	111	92	72	4.21	3.56	2.95	2.31
552	C., B. & Q.....	do.	Omaha.....	136	114	92	70	4.33	3.63	2.93	2.23
553	St. L. & S. F.....	South.	Kansas City.....	170	150	127	110	5.45	4.80	4.07	3.52
Rate basis b.											
554	Northern Pacific.....		Tacoma and Seattle.....	177	115	104	95	4.08	3.69	3.33	3.05
555	Great Northern.....		Seattle.....	175	149	123	105	5.21	4.43	3.64	3.00
556	Great Northern.....		Tacoma.....	205	174	147	126	6.25	5.32	4.37	3.12
557	C. & N. W.....	West.	Omaha.....	195	166	137	117	5.90	5.20	4.28	3.66
558	Northern Pacific.....	do.	St. Paul.....	160	128	105	90	4.46	3.84	3.12	2.68
559	Great Northern.....	do.	Minneapolis.....	148	124	103	85	4.39	3.68	3.06	2.52
560	Canadian Pacific.....	do.	Winnipeg.....	140	117	94	72	4.16	3.47	2.79	2.13
561	C., B. & Q.....	do.	Omaha.....	190	170	145	123	5.66	5.06	4.32	3.66
562	St. L. & S. F.....	South.	Kansas City.....	177	115	104	95	3.84	3.42	3.09	2.83
Rate basis c.											
563	Northern Pacific.....		Tacoma and Seattle.....	175	150	121	104	4.75	4.08	3.27	2.82
564	Great Northern.....		Seattle.....	210	180	145	125	5.70	4.87	3.92	3.38
565	Great Northern.....		Tacoma.....	210	180	145	125	5.69	4.87	3.92	3.38
566	C. & N. W.....	West.	Omaha.....	210	179	147	126	5.70	4.84	3.98	3.41
567	Northern Pacific.....	do.	St. Paul.....	163	139	114	98	4.44	3.79	3.11	2.67
568	Great Northern.....	do.	Minneapolis.....	153	128	108	91	4.17	3.49	2.74	2.45
569	Canadian Pacific.....	do.	Winnipeg.....	151	127	102	77	4.12	3.47	2.79	2.10
570	C., B. & Q.....	do.	Omaha.....	190	170	145	123	5.17	4.62	3.94	3.24
571	St. L. & S. F.....	South.	Kansas City.....	177	115	104	95	3.45	3.12	2.83	2.58

e Rate on basis of 100 per cent reduction.

Defendants urge that the rate comparisons submitted by complainants are of slight probative force because they do not cover the movement of traffic in respect of which transportation conditions are similar to those applying to the transportation eastbound from Seattle, Tacoma, and Portland. Defendants have therefore submitted certain rate comparisons which they claim are of more value. The following table of rate comparisons is taken from the exhibit prepared by them:

Great Northern Railway.

[Class rates from Seattle to various Great Northern Railway stations in Washington, as compared with rates in other sections for similar distances.]

Miles.	Road.	From—	To—	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
197	G. N.	Seattle.	Crater.	95	81	66	56	48	43	38	29	22	16
200	G. N.	Butte.	Carter.	74	63	52	44	44	44	40	30	25	20
203	C. P.	Vancouver.	Ashcroft.	94	78	63	47	42	35	26	27	...	21
203	D. & R. G.	Pueblo.	Rogers.	135	116	103	85	70	70	55	47	33	33
196	D. & R. G.	Denver.	Chicoas Junction.	71	59	52	39	37	34	29	20	20	20
198	L. & N.	Birmingham.	Brentwood.	70	60	53	44	37	28	26	20	22	18
199	S. P. L. A. & S. L.	Salt Lake City.	Zenda.	100	85	70	60	59	50	40	35	25	20
248	G. N.	Seattle.	Krupp.	109	95	83	72	58	54	48	36	27	20
250	G. N.	Butte.	Calro.	84	71	59	50	50	50	48	36	30	24
251	C. P.	Vancouver.	Kamloops.	109	91	73	55	48	41	30	30	...	24
249	D. & R. G.	Pueblo.	Chacra.	140	125	100	75	60	60	48	45	30	30
252	D. & R. G.	Denver.	Alamosa.	115	102	85	63	50	50	40	35	33	33
249	L. & N.	Birmingham.	Portland.	90	77	62	57	52	43	41	44	28	22
247	S. P. L. A. & S. L.	Salt Lake City.	Ford.	120	102	84	72	60	60	48	42	36	24
297	G. N.	Seattle.	Bluemstem.	123	109	94	77	62	62	52	42	32	23
295	G. N.	Butte.	Havre.	94	80	66	56	56	56	55	41	55	28
299	C. P.	Vancouver.	Notch Hill.	123	103	82	62	56	47	33	34	...	27
298	D. & R. G.	Pueblo.	DeBeque.	140	125	110	75	60	60	48	45	30	30
296	D. & R. G.	Denver.	Big Horn S. H.	128	117	97	77	61	61	44	39	34	34
294	L. & N.	Birmingham.	Smiths Grove.	96	81	64	59	54	50	50	50	29	23
299	S. P. L. A. & S. L.	Salt Lake City.	Acoma.	140	120	99	85	71	71	56	49	35	28

Complainants contend that the comparisons offered by defendants are not fair for the reason that they cover lines where traffic is much less dense, and operation more difficult than over the roads eastbound from the coast. It is pointed out that eastward from Vancouver, on the Canadian Pacific, there is little except mountain scenery for a distance of 700 miles; that so far as the Denver & Rio Grande is concerned, it is confessedly a mountain road, the operation of which is exceedingly difficult and much above the average in expense, and that the distributive rates east from San Francisco are at present under attack as excessive.

The following tables, selected from the exhibits, indicate the increase in gross and net revenue of the principal defendants during the period 1897 to 1908:

19 I. C. C. Rep.

Comparative statement showing various items of traffic, mileage, operation, and tonnage statistics of railways for the fiscal years ending June 30, 1897, 1907, and 1908.

[Figures from annual reports to Interstate Commerce Commission.]

NORTHERN PACIFIC RAILWAY.

No.	Name of item.	How designated.	1897.	1907.	1908.
1	Mileage operated.....	Miles.....	4,530	5,444	5,633
2	Gross earnings from operation.....	Dollars.....	18,445,594	68,447,454	68,235,484
3	Gross earnings per mile of road.....	do.....	4,072	12,574	12,113
4	Total operating expenses.....	do.....	12,392,129	37,601,938	39,665,033
5	Net earnings.....	do.....	6,059,234	30,845,516	28,370,451
6	Percentage of operating expenses to earnings.....	Per cent.....	76.73	54.94	58.42
7	Operating expenses per mile of road.....	Dollars.....	2,736	6,907	7,077
8	Net income from operation per mile of road.....	do.....	1,338	5,666	5,086
9	Maintenance of way and structures charged to operating expenses.....	do.....	3,852,038	9,069,536	8,964,356
10	Maintenance of way and structures per mile of road.....	do.....	850	1,666	1,595
11	Maintenance of equipment charged to operating expenses.....	do.....	1,652,938	5,651,129	5,436,767
12	Maintenance of equipment per mile of road.....	do.....	365	1,038	1,498
13	Total freight revenue.....	do.....	13,456,502	47,668,244	46,423,836
14	Freight earnings per mile of road.....	do.....	2,970	8,798	8,241
15	Number of tons carried, freight earning revenue.....	Tons.....	3,940,913	16,741,470	15,836,823
16	Tons carried 1 mile per mile of road.....	do.....	268,772	1,011,164	915,334
17	Average distance of haul, 1 ton.....	Miles.....	309	329	326
18	Average tons per loaded car, commercial freight.....	Tons.....	10.19	17.78	18.96
19	Average train load.....	do.....	187	407	431
20	Average receipts per ton per mile.....	Mills.....	11.39	8.66	9.00
21	Freight earnings per train mile.....	Cents.....	214	354	388
22	Average amount received for each ton freight.....	do.....	352	285	293
23	Percentage of empty cars in train.....	Per cent.....	27.57	21.08	19.20

GREAT NORTHERN RAILWAY COMPANY.

1	Mileage operated.....	Miles.....	3,826	5,227	6,515
2	Gross earnings from operation.....	Dollars.....	15,084,652	50,208,035	54,069,589
3	Gross earnings per mile of road.....	do.....	3,953	9,606	8,300
4	Total operating expenses.....	do.....	8,164,756	29,446,866	35,867,660
5	Net earnings.....	do.....	6,969,896	20,761,169	18,201,929
6	Percentage of operating expenses to gross earnings.....	Per cent.....	54.31	58.65	64.34
7	Operating expenses per mile of road.....	Dollars.....	2,148	5,972	6,506
8	Net income from operation per mile of road.....	do.....	1,805	3,732	2,794
9	Maintenance of way and structures charged to operating expenses.....	do.....	2,436,583	7,264,267	9,969,677
10	Maintenance of way and structures per mile of road.....	do.....	637	1,389	1,530
11	Maintenance of equipment charged to operating expenses.....	do.....	1,024,634	5,343,567	7,836,434
12	Maintenance of equipment per mile of road.....	do.....	268	1,022	1,206
13	Total freight revenue.....	do.....	11,974,463	37,175,721	40,046,394
14	Freight earnings per mile of road.....	do.....	3,147	7,122	6,147
15	Number of tons carried, freight earning revenue.....	Tons.....	3,387,633	18,221,120	19,232,226
16	Tons carried 1 mile per mile of road.....	do.....	303,377	941,512	787,787
17	Average distance of haul, 1 ton.....	Miles.....	341	370	367
18	Average tons per loaded car, commercial freight.....	Tons.....	12.65	20.00	20.49
19	Average train load.....	do.....	264	562	511
20	Average receipts per ton per mile.....	Mills.....	10.37	7.55	7.30
21	Freight earnings per train mile.....	Cents.....	280	425	399
22	Average amount received for each ton freight.....	do.....	353	204	206
23	Percentage of empty cars in train.....	Per cent.....	21.48	24.05	23.28

OREGON RAILROAD & NAVIGATION COMPANY.

1	Mileage operated.....	Miles.....	1,059	1,246	1,257
2	Gross earnings from operation.....	Dollars.....	4,130,902	12,942,815	14,149,704
3	Gross earnings per mile of road.....	do.....	3,900	10,396	11,253
4	Total operating expenses.....	do.....	2,246,216	6,990,821	7,307,476
5	Net earnings.....	do.....	1,884,686	5,972,993	6,842,227
6	Percentage of operating expenses to gross earnings.....	Per cent.....	54.37	53.85	51.64
7	Operating expenses per mile of road.....	Dollars.....	2,121	5,562	5,811
8	Net income from operation per mile of road.....	do.....	1,780	4,794	5,441
9	Maintenance of way and structures charged to operating expenses.....	do.....	561,122	1,961,331	1,714,028
10	Maintenance of way and structures per mile of road.....	do.....	530	1,590	1,363
11	Maintenance of equipment charged to operating expenses.....	do.....	331,111	935,481	1,079,135

Comparative statement showing various items of traffic, mileage, operation, and tonnage statistics of railways for the fiscal years ending June 30, 1897, 1907, and 1908—Cont'd.

OREGON RAILROAD & NAVIGATION COMPANY—Continued.

No.	Name of item.	How designated.	1897.	1907.	1908.
12	Maintenance of equipment per mile of road.....	Dollars...	303	750	850
13	Total freight revenue.....	do.....	3,109,705	8,946,604	9,186,687
14	Freight earnings per mile of road.....	do.....	2,935	7,181	7,806
15	Number of tons carried, freight earning revenue.....	Tons.....	862,400	3,442,651	3,764,328
16	Tons carried 1 mile per mile of road.....	do.....	179,201	608,984	602,318
17	Average distance of haul, 1 ton.....	Miles.....	220	220	201
18	Average tons per loaded car, commercial freight.....	Tons.....	12.54	20.12	21.95
19	Average train load.....	do.....	175	419	453
20	Average receipts per ton per mile.....	Mills.....	16.38	11.79	12.95
21	Freight earnings per train mile.....	Cents.....	300	494	586
22	Average amount received for each ton of freight.....	do.....	351	260	261
23	Percentage of empty cars in train.....	Per cent.....	24.21	18.76	17.08

OREGON SHORT LINE RAILROAD COMPANY.

1	Mileage operated.....	Miles.....	1,430	1,393	1,440
2	Gross earnings from operation.....	Dollars.....	5,732,107	17,196,119	16,214,042
3	Gross earnings per mile of road.....	do.....	4,000	12,341	11,259
4	Total operating expenses.....	do.....	3,205,879	7,352,329	7,760,692
5	Net earnings.....	do.....	2,526,227	9,843,790	8,453,351
6	Percentage of operating expenses to earnings.....	Percent.....	52.40	42.76	47.86
7	Operating expenses per mile of road.....	Dollars.....	2,242	5,277	5,389
8	Net income from operation per mile of road.....	do.....	1,768	7,065	5,670
9	Maintenance of way and structures charged to operating expenses.....	do.....	925,197	1,857,719	2,011,656
10	Maintenance of way and structures per mile of road.....	do.....	647	1,355	1,328
11	Maintenance of equipment charged to operating expenses.....	do.....	501,705	1,578,219	1,811,606
12	Maintenance of equipment per mile of road.....	do.....	351	1,133	1,258
13	Total freight revenue.....	do.....	4,186,982	12,853,101	11,403,600
14	Freight earnings per mile of road.....	do.....	2,929	9,224	7,919
15	Number of tons carried, freight earning revenue.....	Tons.....	1,380,299	5,128,513	4,525,680
16	Tons carried 1 mile per mile of road.....	do.....	268,534	1,075,434	848,337
17	Average distance of haul, 1 ton.....	Miles.....	287	292	270
18	Average tons per loaded car, commercial freight.....	Tons.....	13.37	23.15	22.54
19	Average train load.....	do.....	239	483	460
20	Average receipts per ton per mile.....	Mills.....	11.18	8.58	9.23
21	Freight earnings per train mile.....	Cents.....	268	414	429
22	Average amount received for each ton of freight.....	do.....	322	250	260
23	Percentage of empty cars in train.....	Per cent.....	23.92	29.59	28.09

The following tables are a comparison of certain operating statistics of the five principal defendants with each other and with certain other lines operating in the west:

Comparative operating statistics for years stated.

NUMBER OF TONS CARRIED ONE MILE PER MILE OF ROAD.

	1907.	1908.		1907.	1908.
Defendants:					
O. R. & N.....	608,984	602,318	C., B. & Q.....	802,722	735,705
O. S. L.....	1,075,434	848,337	C. & N. W.....	718,982	638,881
U. P.....	1,146,918	1,067,774	C., R. I. & P.....	549,965	511,454
N. P.....	1,011,164	915,334	C. P. R.....	663,104	622,722
G. N.....	941,512	787,787	St. L. & S. F.....	525,118	496,858

Comparative operating statistics for years stated—Continued.

AVERAGE DISTANCE OF HAUL.

	1907.	1908.		1907.	1908.
Defendants:	<i>Miles.</i>	<i>Miles.</i>		<i>Miles.</i>	<i>Miles.</i>
O. R. & N.....	220.38	201.20	C. B. & Q.....	283.71	267.62
O. S. L.....	291.63	269.95	C. & N. W.....	144.46	158.07
U. P.....	390.33	396.55	C. R. I. & P.....	237.33	243.60
N. P.....	328.79	325.59	C. P. R.....	377.97	389.95
G. N.....	270.06	266.84	St. L. & S. F.....	163.92	161.39

AVERAGE RECEIPTS PER TON PER MILE.

Defendants:					
O. R. & N.....	\$0.01179	\$0.01296	C. B. & Q.....	\$0.00787	\$0.00796
O. S. L.....	.00858	.00933	C. & N. W.....	.00904	.00867
U. P.....	.00959	.00962	C. R. I. & P.....	.00953	.00932
N. P.....	.00866	.00900	C. P. R.....	.00772	.0075
G. N.....	.00755	.00780	St. L. & S. F.....	.01010	.00972

FREIGHT EARNINGS PER MILE OF ROAD.

Defendants:					
O. R. & N.....	\$7,181	\$7,806	C. B. & Q.....	\$6,325	\$5,855
O. S. L.....	9,224	7,918	C. & N. W.....	6,635	5,497
U. P.....	11,000	10,267	C. R. I. & P.....	5,238	4,765
N. P.....	8,798	8,240	C. P. R.....	5,148	4,672
G. N.....	7,121	6,147	St. L. & S. F.....	5,304	4,735

FREIGHT EARNINGS PER TRAIN MILE.

Defendants:					
O. R. & N.....	\$4.94	\$5.86	C. B. & Q.....	\$3.10	\$3.06
O. S. L.....	4.14	4.29	C. & N. W.....	2.46	2.27
U. P.....	3.00	3.96	C. R. I. & P.....	2.53	2.38
N. P.....	3.54	3.88	C. P. R.....	2.36	.....
G. N.....	4.24	3.99	St. L. & S. F.....	.....	.....

GROSS EARNINGS FROM OPERATION PER MILE OF ROAD.

Defendants:					
O. R. & N.....	\$10,386	\$11,262	C. B. & Q.....	\$9,133	\$8,660
O. S. L.....	12,341	11,268	C. & N. W.....	9,122	8,284
U. P.....	15,144	14,287	C. R. I. & P.....	7,964	7,894
N. P.....	12,573	12,112	C. P. R.....	8,052	7,243
G. N.....	9,606	8,299	St. L. & S. F.....	7,630	7,071

NET INCOME FROM OPERATION PER MILE OF ROAD.

Defendants:					
O. R. & N.....	\$4,794	\$5,441	C. B. & Q.....	\$2,653	\$2,504
O. S. L.....	7,064	5,869	C. & N. W.....	3,190	2,827
U. P.....	5,547	6,144	C. R. I. & P.....	2,433	2,024
N. P.....	5,656	5,036	C. P. R.....	2,902	2,160
G. N.....	3,972	2,794	St. L. & S. F.....	2,716	2,116

PERCENTAGE OF OPERATING EXPENSES TO GROSS EARNINGS.

Defendants:					
O. R. & N.....	53.85	51.64	C. B. & Q.....	71.21	71.09
O. S. L.....	42.76	47.86	C. & N. W.....	65.03	65.87
U. P.....	56.76	56.99	C. R. I. & P.....	69.44	72.62
N. P.....	54.94	58.42	C. P. R.....	64.96	69.47
G. N.....	58.65	66.34	St. L. & S. F.....	64.41	70.08

Comparative operating statistics for years stated—Continued.

AVERAGE NUMBER OF TONS OF FREIGHT PER TRAIN MILE.

	1907.	1908.		1907.	1908.
Defendants:					
O. R. & N.....	419	452	C. B. & Q.....	394	394
O. S. L.....	483	450	C. & N. W.....	271	261
U. P.....	375	414	C. R. I. & P.....	265	265
N. P.....	406	430	C. P. R.....	303	.....
G. N.....	561	511	St. L. & S. F.....	.....	.....

AVERAGE NUMBER OF TONS OF FREIGHT PER LOADED CAR.

	1907.	1908.		1907.	1908.
Defendants:					
O. R. & N.....	20.12	21.95	C. B. & Q.....	17.55	17.54
O. S. L.....	23.15	22.54	C. & N. W.....	16.00	14.86
U. P.....	16.13	17.30	C. R. I. & P.....	15.02	15.18
N. P.....	17.78	18.86	C. P. R.....	17.13	.....
G. N.....	20.00	20.49	St. L. & S. F.....	.....	.....

PERCENTAGE OF EMPTY CARS IN TRAIN.

	1907.	1908.		1907.	1908.
Defendants:					
O. R. & N.....	13.76	17.08	C. B. & Q.....	26.58	26.48
O. S. L.....	29.59	23.09	C. & N. W.....	29.92	23.90
U. P.....	24.88	26.40	C. R. I. & P.....	26.95	28.58
N. P.....	21.08	19.20	C. P. R.....	22.86	.....
G. N.....	24.06	23.28	St. L. & S. F.....	.....	.....

As has been noted, the Northern Pacific and Great Northern have proposed a reduction of substantially 16½ per cent in the class rates. Any reduction is opposed by the Oregon Railroad and Navigation Company. Partly for this reason, and partly because the traffic and financial statistics of the Great Northern and Northern Pacific were made the subject of such minute inquiry in the *Spokane case*, the evidence in these proceedings relates particularly to the Oregon Railroad & Navigation Company. The record discloses at considerable length, by testimony and exhibits, a very complete history of the traffic and financial condition of that company. This is perhaps fortunate, inasmuch as the rail lines of the Navigation Company lie wholly in the territory involved in these proceedings, and it may better than any road which extends to the middle west by its own rails, and as to which a segregation of revenues and expenses as between its eastern, western, and through business is exceedingly difficult, indicate the result of railroad operation in a prosperous section of the Pacific Northwest. Therefore we shall only refer to the findings relating to original cost, reproduction cost, and capitalization of the Northern Pacific and Great Northern as set forth in the report in the *Spokane case*, 19 I. C. C. Rep., 162, and proceed to examine similar evidence in respect of the Navigation Company offered in this record.

The Navigation Company called as a witness an expert civil engineer, who testified that for about eighteen months he had been

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engaged, with a considerable force of assistants, in undertaking to make an estimate of the original cost and the cost of reproduction of the railroad property of the Oregon Railroad & Navigation Company. The work consisted in making a complete enumeration of the items of construction, including the roadbed, bridges, track system, spurs, sidings, station buildings, rolling stock, shop machinery, tools, and everything connected with the railroad property.

The original cost was made up from an examination of the original vouchers and books of account. In attempting to get at the cost of reproduction a complete examination of property was made for the purpose of ascertaining the quantities, and the quantities were checked against any original final estimates which could be found. All the original final estimates were found with the exception of the line from Walla Walla to Grange City and for a section of the line between The Dalles and Umatilla. For those portions of the line the engineer cross sectioned the work in the field. Against all the quantities found to have been used the engineer applied certain unit values and costs. The exhibit introduced in evidence, indicating the result of the engineer's computations, gives as an estimate of the reproduction cost of the lines of the Oregon Railroad & Navigation Company \$89,665,722 for 1,404.93 miles of road, or \$63,822 per mile. The engineer's testimony explained the process used in making the estimate and certain of the items therein. The engineer assumed that the construction period would be four years, and that no revenue would be earned by the road until the end of the construction period; that the money to build the road would be secured by the issue of bonds at a 10 per cent discount, and that interest on the amount so secured, at 5 per cent, would be paid for one-half the construction period.

Another exhibit introduced in connection with the engineer's testimony shows the original cost of the railroad property, taken from records in the auditor's office, to be \$63,244,892. This indicates a difference between reproduction cost and the actual amount expended of \$26,420,830. The major portion of the difference between the original cost and cost of reproduction is in interest, real estate, freight, and betterment charges. The difference in interest and discount is shown by the records in the auditor's office, and his estimate in the reproduction cost amounts to \$7,457,356. This difference is said to arise from the fact that the road was built in sections from time to time and money was advanced by the parent company on open book account, without interest, and there was no discount on stocks and bonds. The original cost of real estate amounted to \$2,222,461, whereas the cost of real estate for reproduction purposes is estimated to be \$8,740,037, making a difference of \$6,517,576. The difference

between the reproduction estimate of freight charges and the original freight charge amounts to \$3,899,869. It was the custom of the Oregon Railroad & Navigation Company during construction to charge freight at the rate of one-half cent per ton per mile in some of the accounts; in other accounts no charges were made for freight, and the cost of transporting material was charged to operation of the parent line. In the reproduction estimates freight charges were based on existing published tariffs. These large differences are as follows:

Interest and discount.....	\$7,457,356
Real estate.....	6,517,576
Freight charges.....	3,899,869
Total.....	17,874,801

Adding these items to the original cost of \$63,244,892 the result is \$81,119,693, or \$8,546,029 less than the reproduction estimate.

The exhibits in respect of original and reproduction cost show only summaries of final results. It is therefore impossible to determine, upon this record what, if any, deductions ought properly to be made from the reproduction estimate. We believe we may safely assume that it is on a scale sufficiently liberal not to understate the present value of the road. The reproduction estimates of several subsidiary lines which have been built during the past decade are rather surprisingly in excess of the actual cost incurred only a few years ago in their construction. On the whole, we think it would be more fair to accept the present value of the road at \$81,000,000 than at the reproduction estimate fixed by the company's engineer.

The net earnings from operation of the railroad lines of the Oregon Railroad & Navigation Company for the last ten years have been as follows:

1900.....	\$3,474,654.88	1906.....	\$5,754,930.28
1901.....	3,670,147.19	1907.....	5,601,127.04
1902.....	4,196,704.91	1908.....	6,399,501.74
1903.....	4,859,311.05	1909.....	5,579,001.65
1904.....	4,464,990.39		
1905.....	4,497,726.91	Total for ten years..	48,498,096.04

This is an average earning for ten years of \$4,849,809.60 per year, almost 14 per cent on the present capital stock; or, assuming a property value of \$81,000,000, as of June 30, 1908, the net income would have paid a dividend for 1908 and 1909 of a trifle over 7 per cent on the actual value of the property, or slightly more than 9 per cent upon the original cost of \$63,244,892.

The above figures, however, do not indicate the entire return from the operation of the property. While the record does not disclose accurately the extent to which permanent improvements and

betterments have been made from current revenues and charged to operating expenses, it is certain that large amounts have been so expended. During the period above mentioned the road has been maintained in excellent physical condition, and portions of it have been entirely rebuilt.

The authorized capital of the Oregon Short Line Railroad Company is \$60,000,000, of which amount but \$27,460,000 is outstanding. On June 30, 1908, the Union Pacific Railroad Company owned \$27,350,700. The bonded indebtedness of this company bears no relation to its value as a railroad property. It has been used very largely as a holding company and in consequence has issued a very large amount in bonds. On June 30, 1908, it held the following investment stocks and bonds:

Investment stocks.....	\$203, 916, 700
Investment bonds.....	21, 079, 500
Total.....	224, 996, 200

The Oregon Short Line paid no dividends from 1898 to 1905, inclusive. Since that year its dividends have been as follows:

	Per cent.	Dividend.
1906.....	50	\$13, 730, 050
1907.....	30	8, 238, 030
1908.....	110	30, 065, 770
1909.....	25	6, 837, 675

This would produce an average dividend of more than 17 per cent for the twelve years from 1898 to 1909, inclusive. How much of the dividends above mentioned has been paid from transportation revenue and how much from other sources is not disclosed by the record.

But little need be said concerning the Spokane, Portland & Seattle Railway in relation to the present proceedings. The entire road, from Spokane to Portland, has been in operation since May 3, 1909, and from Portland to Pasco for over a year. It was built by the Great Northern and Northern Pacific jointly for the purpose of relieving congestion, avoiding double tracking over the Cascade Mountains, and furnishing a road of low grades from western Washington to tidewater on the Pacific coast. It is said to have cost in excess of \$40,000,000. So far as these proceedings are concerned, we believe this road must properly be considered a part of the Northern Pacific and Great Northern systems rather than as an independent line. It is used by the Great Northern and Northern Pacific in the transportation of all business between coast and interior points which can be handled more cheaply over it than over the existing lines of the Great Northern or Northern Pacific.

The total earnings of the Spokane, Portland & Seattle Railway from all sources for the year ended June 30, 1909, were \$1,152,670.80; its total of operating expenses and taxes were \$897,468.30, of which amount \$793,209.53 were operating expenses. It was estimated that, based upon earnings since the opening of the entire line on May 3, 1909, it would at the end of that year show a net return of \$1,560,000.

Testimony was introduced, to which no more than a passing reference is here necessary, in relation to the grades encountered by defendants in moving traffic eastbound. The Oregon Railroad & Navigation Company crosses the Blue Mountains under heavy grades. The Northern Pacific and Great Northern also encounter heavy grades of varying degree in crossing the Cascades, but the testimony would indicate that the rates are not fixed with particular reference to the grades encountered, either eastbound or westbound.

Upon consideration of the whole record, as well as the facts herein set forth, we are of the opinion, and so find, that the present interstate class rates exacted by defendants for transportation from Seattle, Tacoma, and Portland to points in Washington, Oregon, Idaho, and Montana are unreasonable. The record does not afford an adequate basis for a reduction upon any particular class of traffic or to any designated points. We are convinced that approximate justice can be accomplished only by a horizontal reduction of the class rates, and that the amount of the reduction should not be less than 20 per cent.

As we have suggested in the *Spokane case*, 19 I. C. C. Rep., 162, and kindred cases, 19 I. C. C. Rep., 218, 238, and 257, we desire to proceed in this matter with due caution. We realize that a reduction of the rates to the amount named, taken in connection with other reductions proposed by the Commission in cognate cases, may entail a more or less material reduction in defendants' revenues, the amount of which cannot now be accurately approximated. Therefore we desire, before making a final order, to be informed of the result of an actual test. The defendants will accordingly be required to keep an accurate and detailed account for the months of July, August, and September, 1910, or for such other representative months as may be determined upon by the Commission after conference with the defendants, showing the revenue which actually accrued under the class rates in issue and the revenue which would have accrued on the same volume of business under a twenty-per-cent reduction in those rates. The account must, of course, be limited to the rates and traffic mentioned, but the carriers may, if they so desire, keep and present to the Commission separate accounts showing the loss in revenue resulting from other reductions which they would feel obliged to make as a consequence of the Commission's finding in this case. It is expected that the matter will be so handled by the parties that the cases may be ready for final disposition on October 1.

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No. 2002.

ST. PAUL BOARD OF TRADE ET AL.

*v.*MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY
COMPANY.

Submitted December 15, 1909. Decided June 10, 1910.

The defendant maintains two proportional rates out of Minnesota concentrating markets to Manistique, Mich., on butter and eggs destined to eastern points, one of 20 cents and one of 40 cents per 100 pounds, the former being limited in its application to butter and eggs that have reached the concentrating points over defendant's line, and the 40-cent rate being an open rate applicable on butter and eggs reaching those markets over other rails; *Held*, That the defendant may make a distinction in its rates between shipments originating at the concentrating points, so far as its line is concerned, and traffic upon which it has had a haul into the concentrating points; but it may do this only under proper tariff provisions connecting the inbound with the outbound movements, and then only when the inbound movement to the concentrating point proceeds under rates on file with this Commission.

Durment & Moore for complainants.*Alfred H. Bright* for defendant.

REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

This complaint was filed by two associations, the St. Paul Board of Trade and the Minneapolis Produce Exchange, as joint petitioners. It involves the relation of the rates of the defendant, as between St. Paul and Minneapolis on the one hand and Paynesville and Alexandria on the other, all in the state of Minnesota, on shipments of butter and eggs to Manistique, in the state of Michigan, when destined beyond to eastern points. It is alleged that the present adjustment results in a discrimination against the dealers in those commodities at St. Paul and Minneapolis, which, for convenience, are hereinafter referred to as the Twin Cities, and in an undue advantage to the dealers at Paynesville and Alexandria. The complaint is inartificially drawn, but taken with the record we understand that the issue the petitioners desire to present arises out of substantially the following facts:

Paynesville and Alexandria are on the line of the defendant, about 83 miles and 137 miles, respectively, west of Minneapolis, and are
19 L. C. Rep.

concentrating points for a considerable volume of butter and eggs produced in the adjoining and tributary farming districts. From Paynesville the defendant for some time has maintained two proportional rates to Manistique, one of 20 cents and the other of 40 cents per 100 pounds, applicable on through shipments of butter and eggs in carloads to eastern destinations. It has also maintained on the same traffic two proportional rates from Alexandria to Manistique, one of 27 cents, which has been reduced to 20 cents since the complaint was filed, and the other of 40 cents. Under tariff provision to that effect the 20-cent rate, now in effect from both points, is limited to butter and eggs that have come into those markets over the rails of the defendant. The 40-cent rate from both points is an open proportional rate to Manistique, applicable on through shipments of butter and eggs originating at those points or that have come in over the rails of other carriers from more distant points of production.

At the time the complaint was filed the only available rate from the Twin Cities to Manistique, on movements to points beyond, was a 40-cent proportional rate. But the defendant has since established from those markets a proportional rate of 20 cents per 100 pounds, applicable however, as is the case with the similar rate from Paynesville and Alexandria, only when the butter and eggs are brought into the Twin Cities over the line of the defendant. And herein lies the trouble as we gather it from the record. Although the subsequent publication of a 20-cent proportional rate from the Twin Cities to Manistique satisfies the complaint on the face of the record, in that it makes St. Paul and Minneapolis common points with Paynesville and Alexandria under both the 20-cent and the 40-cent rates, the adjustment does not give the dealers at the Twin Cities the practical results that they desire. It appears that little if any traffic moves from Alexandria and Paynesville under the 40-cent rate to Manistique; this is due to the fact that the butter and eggs shipped from those two points to the east largely originate on the line of the defendant at producing points north and west of Alexandria and Paynesville, and therefore take the 20-cent rate. On the other hand, very little of the traffic from the Twin Cities to Manistique enjoys the benefit of the 20-cent rate, for the reason, as we are advised, that the larger part of the butter and eggs concentrated at the Twin Cities comes in over other lines and therefore takes the 40-cent rate to Manistique. The complainants assert in fact that the 20-cent rate from Minneapolis and St. Paul is of practically no advantage to the dealers in butter and eggs at those points; and this must necessarily be the case, except as to butter and eggs backhauled by the defendant from points east of the Twin Cities, or from its line west of those markets at points from which they can

reach the Twin Cities at a local rate that is equal to or less than the local rate for the back haul to Alexandria or Paynesville. Apparently such points do not furnish much traffic, and they are not the subject of any substantial controversy on the record. The bulk of the defendant's traffic in these commodities is produced at points on its line in Minnesota and the Dakotas west of Paynesville and north of Alexandria; and so long as the Twin Cities, which are about 100 miles more distant from those points, take the same proportional rate to Manistique that is applicable on shipments from Alexandria and Paynesville, the traffic is concentrated to better advantage at the latter points because of the shorter local haul and the consequent lower charge on the inbound movement.

For these reasons and with respect to the greater part of the traffic the parity of rates between the competing markets is therefore largely a technical one, and exists, so far as practical results are concerned, only on the face of the defendant's tariff schedules. The proportional rate from Manistique to the east, taking Boston as a typical destination, is 71 cents per 100 pounds. This, added to the 20-cent proportional rate to Manistique on traffic concentrated at these markets over the defendant line, makes a total through charge to Boston of 91 cents per 100 pounds. This is the through outbound charge generally paid by the dealers of Alexandria and Paynesville. But the butter and eggs that move from the Twin Cities to Boston, as heretofore explained, ordinarily take the 40-cent proportional rate to Manistique, making a total through outbound charge of \$1.11 per 100 pounds. Disregarding the inbound movement to the several markets, the dealers at the Twin Cities on traffic actually moved through to Boston therefore pay 20 cents per 100 pounds more, although the haul is substantially 100 miles less, than the through outbound charges usually paid by their competitors at Alexandria and Paynesville over the same route. The complainants are not satisfied therefore with the fact that the defendant's tariff now names the same proportional rates from the Twin Cities as from the other two markets, but insist upon a parity in the total through charges on the traffic as it actually moves from the concentration points. And in order to secure that result they contend that the 20-cent proportional rate now in effect from the Twin Cities to Manistique should be made an open rate, available on all shipments to the east, whether the butter and eggs are concentrated at those markets over the line of the defendant, or are brought in over other lines. They contend in fact that not only should the proportional rate be an open rate but that the Twin Cities should take a rate somewhat lower, because of the shorter haul to the east, than the proportional rate accorded to Alexandria and Paynesville. This seems to be the specific relief that the complainants are seeking.

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The record, however, does not afford us a basis for any such order. We are not prepared to say, as a matter of law, that the 20-cent rate must necessarily be an open rate from the Twin Cities. The defendant is entitled to adjust its rates in such manner that the butter and eggs produced in volume at distant points on its line may reach the eastern markets at a reasonable through charge. With this end in view, and if the transit privilege is properly policed so as to avoid abuses, we see no reason why the defendant may not make a distinction in its rates between butter and eggs that originate at the concentration points, so far as its line is concerned, and butter and eggs upon which it has had a haul into the concentration points; but it can do this only under proper tariff provisions connecting the inbound with the outbound movement and thus fixing the through charges from the producing point. To hold otherwise would require it to exclude from consideration the rates and other conditions under which other lines may bring butter and eggs to these points, and would put it beyond the power of the defendant so to adjust its own rates as to enable butter and eggs produced on its line north and west of the concentration points to compete at destination with butter and eggs produced at the concentration points or which may have been brought in under favorable terms over other lines. We are not able, therefore, to accept as sound the contention of the complainant that, as a matter of law, the 20-cent proportional rate out of the Twin Cities can not legally be limited in its application to butter and eggs that have reached those markets over the line of the defendant.

We have not examined in detail the local rates of the defendant from producing points on its line into the Twin Cities and into Alexandria and Paynesville, nor are we advised as to the local competitive or transportation conditions that may properly affect those rates. But so far as the record gives us any light on the matter we see no reason why the total through charges from a given producing point on the line of the defendant to Manistique, on a shipment destined beyond, should be greater when the traffic is concentrated at the Twin Cities than the total through charges based on Alexandria or Paynesville. Apparently such a rate parity is maintained by the defendant as to many producing points on its line, and as now advised we see no reason why it should not establish and maintain a similar relation of rates from all such points, at least where no local competitive or transportation conditions require a different adjustment.

In this connection it may be well to call attention to the fact that the less-than-carload shipments of butter and eggs from Minnesota points into Alexandria and Paynesville, as well as from the same points into the Twin Cities, apparently move under state rates that are not published with this Commission. At this late day in the dis-

session of such matters it ought not to be necessary to point out to

the defendant that its attempt to connect outbound interstate movements with inbound movements to a concentrating point under rates not on file with this Commission is unlawful. Its outbound 20-cent proportional rate can lawfully be limited only to inbound movements under rates on file here. This defect in the present practice of the defendant must at once be corrected.

We shall enter no order for the present, but shall look to the defendant to adjust its rate schedules on this traffic in conformity with the suggestions here made, and to so advise the Commission. It must be understood that the application of the 20-cent outbound proportional rate may lawfully be limited only to traffic that has reached the concentrating point over the line of the defendant under rates published and filed with the Commission, and that the defendant will at once incorporate into its tariffs proper reconsigning and concentrating or transit provisions to that effect.

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No. 3062.

REITER, CURTIS & HILD

v.

NEW YORK, SUSQUEHANNA & WESTERN RAILROAD
COMPANY.

Submitted April 2, 1910. Decided June 2, 1910.

1. The view expressed that unloading facilities that are ample to meet the general requirements of a community need not be enlarged by a carrier to meet the special requirements of a single shipper on a given occasion.
2. Complaint, demanding refund of demurrage charges that accrued pending negotiations for, and the construction of, private sidings and connections, the work being completed within thirty days after the request for them was made, dismissed as being without merit.

Ball & Ludlow for complainants.

H. A. Taylor and *T. H. Burgess* for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On June 19, 1908, the complainants, a copartnership of railroad contractors, were awarded a contract for the construction of section 6 of a cut-off on the Delaware, Lackawanna & Western Railroad, near Vails, a small town in the state of New Jersey on the line of the defendant, the New York, Susquehanna & Western Railroad Company. They had just finished some construction work for the Pennsylvania Railroad Company, near Mexico and Nescopeck, in the state of Pennsylvania, and their extensive plant and equipment, consisting of steam shovels, locomotives, rails, boilers, engines, compressors, well-drills, rock-drills, cars, wagons, tools, etc., were still on the ground at those points. The Pennsylvania officials were anxious to move the equipment out of the way as soon as possible, and the complainants were no less anxious promptly to install it at the point where their new work was to commence. The necessary sidings and connections were promptly put in, so that the complainants were able to commence shipping from Nescopeck on June 27, and from

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Mexico about July 13, the cars from Nescopeck being billed to "contractor's siding, Vails, N. J.," while those from Mexico were billed simply to Vails.

The defendant's unloading facilities at Vails consist of a team track which had always been ample for the needs of that community but was not sufficient to meet the requirements of the complainants. They needed two private sidings and a connection with a private track, which they proposed to extend to the place where their new work was to be done. Instead of taking the matter up with the defendant before their shipments began to go forward to Vails they did not communicate with it until June 27, which was the day on which the first shipments from Nescopeck were made; and at that time they did nothing beyond making an inquiry by telephone as to the proper method of making an application for a private siding. It will not be necessary to follow in detail the subsequent interviews between the complainants and the defendant commencing on July 1. It will suffice to say that it was necessary for the engineer of the defendant to examine the site, to prepare blueprints, to secure estimates of the cost of the proposed sidings, to make terms with the complainants, and finally to have the work done. In the meantime the cars containing the complainants' equipment, of which there appears to have been 109 in all, began to arrive at Vails, the first shipments reaching that point on July 6, the last car being unloaded on about August 16. The sidings and the desired connections were not ready for use until August 1.

As a result of this situation, demurrage charges accrued against the complainants and were paid by them to the amount of \$1,110, of which they concede that \$43 was justly assessed; and the object of the petition is to require the defendant to refund the balance of \$1,067 on the ground that it was the duty of the defendant to have the sidings and switch connections ready within a reasonable time, and that it failed in this duty in that it did not have them completed until the date last mentioned.

Although it would necessarily have involved some delay, considering the extent of the equipment and the number of cars that arrived at Vails, the complainants could have unloaded the shipments on the defendant's unloading track at Vails. There was room on the track within the defendant's right of way for at least three cars. The complainants were unwilling, however, to use that track because, as they explain, their heavy machinery and equipment could have been unloaded at a team track only at great cost and that course would also have involved a large additional expense for wagon haul for a distance of nearly a mile to the point at which they were to commence work on the right of way of another carrier. They also express a doubt as to whether the public authorities would have been willing to permit

them to haul such heavy material over a public road. To save expense and to meet what they regarded as the necessities of the situation they therefore prepared to, and, as soon as the place of connection was determined upon by the defendant, did build a private track to their place of work, so that, when connected with the defendant's line, the cars containing their equipment could be pushed directly to the point where the material and equipment were needed.

We see in these facts no grounds upon which we may properly award damages to the complainants. Even if it may be said that an interstate carrier is required by law to enlarge its facilities in order to meet the special needs of a single shipper, on a given occasion, a proposition that is obviously untenable, we are unable to find upon the record that there was any such undue delay on the part of the defendant in furnishing additional facilities as to make it legally responsible in damages to the complainants. We know from other proceedings before us that switches and connections must be located with some regard to the safety of main-line passenger and freight traffic, and while it may be true that the defendant might have reached its conclusions more promptly with respect to the sidings and switch connections desired by the complainants, we find in the record no indication of any willful delay on its part or of any purpose to wrong the complainants, or any fact upon which we may predicate legal liability on the part of the defendant to refund the demurrage charges assessed against the complainants in accordance with the published tariffs of the defendant. The request of the complainants was looked into, plans prepared, arrangements made, the material put on the ground, and the work done within approximately thirty days, which seems, from any point of view, a reasonable compliance with the complainants' demand.

The complaint must be dismissed, and it will be so ordered.

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No. 3158.
WILLSON BROTHERS LUMBER COMPANY
v.
NORFOLK SOUTHERN RAILROAD COMPANY ET AL.

Submitted June 7, 1910. Decided June 10, 1910.

In accepting a shipment at a point in North Carolina for carriage to a point in the state of Ohio, the initial carrier assumed the burden of giving the shipper the advantage of the cheapest reasonably direct route; but not being well advised of the available routes, it neither asked instructions of the shipper nor made inquiry of connecting lines; *Held*, That it is liable to the shipper for the excess charge resulting from its mistake in delivering the shipment to the wrong connection.

Robert Allen for complainant.

Edward R. Baird, jr., for Norfolk Southern Railroad Company.

George Stuart Patterson and *George D. Dizen* for Pennsylvania Railroad Company.

H. A. Taylor for Erie Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

A carload of lumber, the weight of which was 47,200 pounds, was shipped on March 9, 1908, from Hertford, in the state of North Carolina, consigned to the Ashland Steel Range & Manufacturing Company at Ashland, in the state of Ohio, and freight charges amounting to \$128.62 were collected on the movement at a combination rate of 27½ cents per 100 pounds. This rate can not be verified from tariffs on file with the Commission as applicable over the route by which the shipment is said to have moved, namely, the line of the principal defendant to Norfolk, thence over the New York, Philadelphia & Norfolk and the various lines of the Pennsylvania system to Akron, whence it was taken by the Erie and delivered at destination.

The consignor gave no routing instructions but requested Erie delivery; and the shipment was delivered at destination on the rails of that carrier. But it appears that another and more direct route was available over which the through charge was but 20½ cents per 100 pounds, made up of a local rate of 4½ cents from Hertford to Berkley, 19 I. C. Rep.

and a joint rate of 16 cents from Berkley to destination over the Norfolk & Western and the Chesapeake & Ohio, with the Erie as a delivering carrier.

The defense made is that the principal defendant was not advised of the rates of its connections, and could not reasonably be required to keep its local agents informed of the through charges to distant points of destination. This, however, can not be accepted as a sufficient excuse upon the facts here disclosed. With respect to this point of origin, the destination in question is not fairly to be regarded as a distant point, as that phrase is used in *Duluth & Iron Range R. R. Co. v. C., St. P., M. & O. Ry. Co.*, 18 I. C. C. Rep., 485, 489; on the contrary, it is located in territory as to which the principal defendant in order to be able to conduct its transportation with reasonable dispatch and satisfaction to itself and the public ought to be more or less well informed. Not being advised, however, as to the cheapest available and reasonably direct route, it could have demanded instructions from the consignor or could have made inquiry of the connecting lines; but it accepted the shipment without pursuing either course and undertook to forward it to destination. In doing so it assumed the burden of giving the shipper the advantage of the cheapest reasonably available route; but it made the mistake of delivering the shipment to the wrong connection. Because of its failure to route the shipment properly we find that the defendant is liable to the complainant in the sum of \$30.68, with interest thereon from April 1, 1908, being the difference between the charges actually collected and the charges that would have been assessable on the shipment over the right route.

It will be so ordered.

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No. 3035.

ALABAMA LUMBER & EXPORT COMPANY

v.

PHILADELPHIA, BALTIMORE & WASHINGTON RAILROAD
COMPANY ET AL.

Submitted April 15, 1910. Decided June 10, 1910.

1. Defendants' rate on lumber from Bellamy, Ala., to Holly Beach, N. J., not found relatively unreasonable under the circumstances disclosed by record.
2. Whether the Sumter & Choctaw Railway Company ought to have been included as a proper or necessary party to this record, or whether it is a common carrier or a private carrier, not considered; the Commission looks to the Southern Railway Company to fix its course with respect to this carrier in conformity with all the requirements of the law.

John J. Earle for complainant.

Ed. Baxter, C. B. Northrop, and Sloss D. Baxter for Southern Railway Company.

George Stuart Patterson for Philadelphia, Baltimore & Washington Railroad Company and West Jersey & Seashore Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The Allison Lumber Company shipped on March 24 and June 4, 1909, two carloads of lumber, weighing respectively 45,600 and 41,000 pounds, from Bellamy, in the state of Alabama, consigned to the petitioners at Holly Beach, in the state of New Jersey. The complainant paid charges in the total sum of \$294.44, at the legal joint through rate of 34 cents per 100 pounds. It appears that on March 19 the general freight agent of the Southern Railway Company at Atlanta had wrongly advised the complainant that the rate was 32 cents per 100 pounds. The erroneous rate seems to have entered into the purchase and sale price of the lumber and is the chief ground for this action.

The Commission has uniformly held that the naming by the carrier, either in the bill of lading or otherwise, of a rate less than that
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published and filed with the Commission, affords no proper basis for a departure from the legal rate or the payment of damages for a loss alleged to have been sustained as the result of the error. *Poor v. C., B. & Q. R. R. Co.*, 12 I. C. C. Rep., 418; *Ohio Iron & Metal Co. v. Wabash R. R. Co.*, 18 I. C. C. Rep., 299.

The complainant, however, does not rely entirely on the misquotation, but cites lower rates of from 23 to 29 cents per 100 pounds to Holly Beach from Arlington and Savannah, in the state of Georgia, and from Paxton and Greenville, in the northern and western part of the state of Florida, the rates to Philadelphia from these points being alleged to be 2 cents less in each instance than to Holly Beach. These rates are published by originating carriers other than the Southern Railway, and, with the exception of Savannah, the originating points from which they apply are not reached by its rails. It may be that they are water-compelled rates, as intimated by the defendants; but in any event the points referred to are not in the immediate vicinity of Bellamy. All points in that vicinity on the Southern Railway take the 34-cent rate. The complainant also asserts that the rate from Bellamy to Philadelphia is 30 cents, and that, with the addition of 2 cents, the proper rate to Holly Beach is 32 cents. The rate from Bellamy to Philadelphia, however, is in fact 26 cents per 100 pounds. We are not fully advised by the complainant with respect to the similarity in the transportation and other conditions surrounding the traffic from Bellamy and the other points named on the record. We are therefore not able to say that the rate from Bellamy is relatively unreasonable. Furthermore, the complainant admits that it will not have occasion to make further shipments from Bellamy to Holly Beach and that it therefore has no particular interest in the rate for the future.

There is another phase of the case which requires comment. Bellamy, the point of origin of these shipments, is not on the rails of the Southern Railway, but is reached by the Sumter & Choctaw Railway, being 3 miles from Lilita, the junction of the two lines. Lilita was also formerly known as Bellamy but is not the point of origin from which these shipments moved. The Sumter & Choctaw Railway Company is not named as a party defendant, although it issued the bills of lading covering the carloads in question and the record indicates that it received a division of 3 cents per 100 pounds out of the 34-cent rate charged. We are not fully informed of the operations and the transportation and accounting methods of the Sumter & Choctaw, and we are therefore not to be understood as definitely finding that it ought to have been included as a proper or necessary party to the record; nor do we attempt in this proceeding to define its status as a common carrier or as a private enterprise. It will suffice for the present to say that we shall look to the Southern

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Railway to fix its course with respect to this so-called common carrier in conformity with all the requirements of the law. There appears to be some question whether the 34-cent rate has been legally established from Bellamy and concurred in by the Sumter & Choctaw Railway. But inasmuch as the rate from Lilita, where the shipment reached the Southern Railway, is also 34 cents per 100 pounds, this is not a question in which the complainant has any real interest.

For these reasons the complaint must be dismissed, and it will be so ordered.



No. 3088.

ALPHA PORTLAND CEMENT COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.

Submitted May 26, 1910. Decided June 10, 1910.

The consignor noted on the bill of lading a route and also a rate which was legally in force only over another route; *Held*, That the initial carrier ought to have forwarded the shipment by the route over which the specified rate applied instead of by the named route which carried a higher rate.

Louis H. Porter for complainant.

Clyde Brown for New York Central & Hudson River Railroad Company.

John L. Seager for Delaware, Lackawanna & Western Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On August 8, 1909, the complainant shipped two carloads of cement, weighing in the aggregate 129,200 pounds, from Martins Creek, in the state of Pennsylvania, to Brockton, in the state of Massachusetts. In delivering the shipment to the initial carrier, the principal defendant herein, a shipping clerk in the employ of the complainant erroneously or inadvertently noted on the bill of lading directions to forward the

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cars to destination over the lines of the Lehigh Valley, West Shore, and Boston & Albany Railroads. But in two places on the bill of lading the through rate of freight was stated at \$2.25 per net ton; and this was in fact the legal joint rate over a through route composed of the principal defendant's line in connection with the New York, New Haven & Hartford Railroad and certain intermediate lines. In this form the bill of lading was executed by the initial carrier's agent, who without inquiry billed the cars forward over the specified route; and they moved in accordance with the billing, over the most direct route available in connection with the lines named, as far as South Framingham, where the Boston & Albany, which does not reach Brockton by its own rails, delivered the cars to the New York, New Haven & Hartford for movement to destination, a short distance beyond. The charges were collected at a rate of \$2.25 per ton to South Framingham, plus the last named company's local rate of 10 cents per 100 pounds, which is equivalent to \$2 per ton, beyond. As the goods were sold on a delivered basis the complainant has therefore sustained a loss to the extent of \$2 per ton, or in the sum of \$129.20, by reason of the higher charges assessed as the result of the erroneous movement.

Upon similar facts the Commission on April 6, 1909, made the following informal ruling, which is published as Rule 159, Bulletin No. 4:

A bill of lading showed both a rate and a route, but the rate did not apply over the route named; *Held*, That in all such cases the shipment should be forwarded via the route over which the stated rate applies unless the rate via the specified route makes lower, in which event the specified routing must be followed.

This ruling, which we now adhere to, together with our ruling of June 8, 1909, which is of similar import and is reported as Rule 186, Bulletin No. 4, must be regarded as controlling in this case. Upon the facts as stated we therefore find that in view of the conflict between the routing instructions and the through rate as specified on the bill of lading, it was the duty of the initial carrier to forward the shipment by the cheaper route or to obtain further and definite directions from the consignor. Because of its failure to pursue either course we think it must be held liable to the complainant for the additional transportation charges resulting from the misrouting. It follows that the complainant is entitled to reparation in the sum of \$129.20, with interest from October 14, 1909.

An order will be entered accordingly.

19 I. C. C. Rep.

No. 1590.
HOMER P. FISK & SONS
v.
BOSTON & MAINE RAILROAD.

Submitted December 18, 1909. Decided June 3, 1910.

1. While an informal letter is sufficient to stop the statute of limitations on reparation claims, yet such letter must contain all the elements of a claim. The letter relied upon herein is not such a definite and independent claim as to defeat the plea of limitation.
2. A carrier may demand its legal charges before delivering freight, and demurrage accruing during a controversy as to such payment can not be refunded on that ground alone, but it must be shown that the charges are unreasonable or unjustly discriminatory.
3. Dissimilarity of conditions affecting the transportation of this coal existing at Springfield, Mass., but not present at Holyoke, Mass., under the decisions of the United States Supreme Court negatives the presumption of unreasonableness of rates as to Holyoke shipments.
4. In the absence of satisfactory evidence the rate charged complainants on coal from the Lackawanna road not found unreasonable.
5. Refund of straight overcharge on certain shipments of coal ordered to be made.

Richard J. Talbot for complainants.

Edgar J. Rich and *G. H. Eaton* for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This complaint, filed June 6, 1908, alleges damages in connection with shipments of anthracite coal from Pennsylvania fields to Holyoke, Mass. The shipments involved moved through Rotterdam Junction, Troy, and Mechanicsville, N. Y., and thence over the Boston & Maine. There are several separate and distinct grounds of complaint and specific damage is alleged as to each. An award of \$30,000 is asked on account of delayed shipments and an additional \$30,000 for unjust discrimination in that other shippers were accorded lower rates. Damages in the sum of \$492.23 are asked for

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the loss in transit of one carload of coal and for two cars alleged to be "illegally removed from the control of the complainants by the Boston & Maine Railroad." Aside from the question of jurisdiction as to certain features thereof no further reference need be made to these claims, inasmuch as no evidence has been introduced to support them. Reparation in the sum of \$1,555.10 is also asked on account of alleged unreasonable charges between February 25, 1903, and January 26, 1907; for \$266.96, because of alleged violation of the long-and-short-haul clause in that the rate to Springfield, Mass., is 5 cents per 100 pounds less than to Holyoke, an intermediate point; and for \$353.93, which complainants allege defendant has "overcharged them with relation to demurrage or indemnity and service charges on the following shipments."

At the outset the question is raised as to the Commission's jurisdiction over shipments made prior to June 6, 1906, which was two years prior to the filing of the complaint. Complainants contend that the statute of limitations has not run because of a letter filed with the Commission on May 23, 1907, in which the rates of the Boston & Maine from Rotterdam Junction to Holyoke and other points, and rates generally from Pennsylvania coal fields to Holyoke and Springfield are set forth. While the Commission holds that it is not necessary that a formal petition be filed in order to stop the statute, an informal letter or other communication to accomplish this result must contain all the elements of a claim. In *Woodward & Dickerson v. L. & N. R. R. Co.*, 15 I. C. C. Rep., 170, a letter received by the Commission clearly setting forth the carriers, date, rate, weight, and points of origin and destination was held sufficient. The letter here relied upon, however, was not filed as a claim, but was part of a correspondence between this office and complainants respecting a general inquiry then being conducted by the Commission, and we do not feel justified in treating it as such a definite and independent claim as to defeat the plea of limitation.

As to the claim for demurrage, no evidence is introduced except that on May 23, 1907, defendant canceled the credit account of complainants, which for a long time previous thereto had been extended, and refused to deliver to their siding until the freight charges were paid. Pending the controversy this demurrage accrued on cars that were held from dates in May until as late as July 22, 1907. Complainants contend that these charges were not justified under the circumstances. Regardless of a carrier's reasons for canceling a credit account, it is undoubted that it may demand its legal charges before delivering freight, and demurrage accruing during a controversy as to such payment can not be refunded on that ground alone, but it must be shown that the charges are unreasonable or unjustly discriminatory. The record shows that this demurrage was collected

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under lawful tariff authority and we are not justified upon this record in ordering a refund thereof.

In considering the alleged violation of the long-and-short haul clause it is necessary to inquire into the conditions of transportation at Springfield and Holyoke, respectively. Springfield is served by the Boston & Maine, New York Central, and the New York, New Haven & Hartford, while Holyoke is reached by the Boston & Maine and New York Central. The New York, New Haven & Hartford and connections reach the Pennsylvania coal fields direct and make a joint rate to Springfield. The Boston & Maine reaches Springfield only through Troy and Rotterdam Junction in connection with lines terminating at those points, and this route is much longer than the direct line of the New York, New Haven & Hartford and connections. The Boston & Maine contends that if it is to participate in Springfield business it must meet this competition of the New York, New Haven & Hartford road. According to decisions of the Supreme Court, which we must follow, the dissimilarity of conditions affecting this traffic at Springfield and Holyoke, respectively, which we find exists and which was admitted by complainants' counsel at the oral argument, negatives the presumption of unreasonableness as to Holyoke shipments.

The real question involved is the reasonableness of the \$1.15 rate on certain shipments from Rotterdam Junction to Holyoke. Anthracite coal originates in Pennsylvania along the Central of New Jersey, Erie, Lehigh Valley, Delaware, Lackawanna & Western, Delaware & Hudson, Pennsylvania, and New York, Ontario & Western roads. The three carriers first named in connection with either the New York Central or the New York, New Haven & Hartford have direct routes into Springfield and Holyoke and publish a joint rate of \$2.80 to the latter place. Prior to June, 1906, these carriers published a rate to Rotterdam Junction of \$1.85. The Boston & Maine participates in the Springfield and Holyoke business only over the circuitous route via Rotterdam Junction, Greenfield, and down the Connecticut Valley. To participate in the Holyoke traffic it was necessary to meet the joint rate of \$2.80 published by the carriers above named, and this was done by publishing a proportional from Rotterdam Junction of 95 cents. This proportional was canceled in June, 1906, when a joint through rate of \$2.80 was established by these lines with the Boston & Maine, that carrier receiving 95 cents as its share of the through rate. Neither the Delaware, Lackawanna & Western nor the Delaware & Hudson published a joint rate to Springfield or Holyoke. The Delaware, Lackawanna & Western's rate to Rotterdam Junction was \$2.45, and as this road had no competitive rate of \$2.80 for the Boston & Maine to meet, the latter carrier charged its full local of \$1.15 from Rotterdam Junction

to Holyoke. Thus the rate to Holyoke was dependent upon the point of origin of the coal, the rate from Central of New Jersey, Erie, or Lehigh Valley mines being \$2.80 and from Delaware, Lackawanna & Western mines \$3.60 per ton. No evidence was introduced as to the reasonableness of the \$1.15 rate from Rotterdam Junction to Holyoke on Delaware, Lackawanna & Western shipments except its comparison with the 95-cent rate on shipments from the other lines referred to. In the absence of other and satisfactory evidence that the \$1.15 rate on Delaware, Lackawanna & Western shipments was unreasonable, we can not so find.

Defendant admits that on shipments since June 6, 1906, there is a straight overcharge of \$46.57, which it is willing to refund. An order will be entered for that sum with interest from January 30, 1908.

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No. 1889.
CORPORATION COMMISSION OF THE STATE OF NORTH
CAROLINA
v.
NORFOLK & WESTERN RAILWAY COMPANY ET AL.

Submitted October 22, 1908. Decided June 7, 1910.

1. Because of conditions which exist at the Virginia cities and do not exist at Winston-Salem and Durham, N. C., complainant's charge of unjust discrimination not sustained upon this record.
2. Because defendants have constructed a system of rates on a zone or blanket system is not sufficient to justify the collection of unreasonable charges to any point. Every city is entitled to the advantage of its location and may not lawfully be subjected to high freight charges merely because carriers, for reasons of convenience or otherwise, include it in a number of other points in surrounding territory, which latter points are not similarly situated.
3. It does not follow as a necessary consequence that the reduction of rates to Winston-Salem and Durham to a reasonable basis would necessarily entail a reduction of rates to other points in North Carolina. It might be true that certain reductions would necessarily be made, but it would be to a few points only and to a very limited extent.
4. While it is true that transportation conditions are to some extent different on the lines extending south from Roanoke and Lynchburg than obtain on the main line from Roanoke to Norfolk, yet the difference by no means warrants rates to Winston-Salem and Durham on through traffic that are so much higher than are maintained to main-line points.
5. Present class rates of the Norfolk & Western on shipments from Roanoke and Lynchburg to Winston-Salem and Durham, respectively, found unjust and unreasonable to the extent that they exceed the rates prescribed in the report.
6. Present class rates of the Norfolk & Western on shipments from Cincinnati, Ohio, to Winston-Salem and Durham, respectively, found unjust and unreasonable to the extent that they exceed the rates prescribed in the report.
7. For the present no order will be made as to the traffic moving from the other western points of origin north of the Ohio named herein.

Tillett & Guthrie, A. J. Justice, Manning & Foushee and H. E. Norris for complainant.

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R. Walton Moore and *Lucien H. Cocke* for Norfolk & Western Railway Company.

W. G. Dearing and *Sloss D. Baxter* for Louisville & Nashville Railroad Company.

Charles Hall Davis, *Richard B. Davis*, *Paul Pettitt*, and *Arthur R. Thompson*, of Thompson & Van Sant, for intervening Virginia cities.

R. Walton Moore for intervening Southern Railway Company and Seaboard Air Line Railway.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

This is a proceeding brought by the corporation commission of the state of North Carolina on behalf of itself and shippers and consumers in the cities of Durham and Winston-Salem, N. C., and points on lines of the Norfolk & Western intermediate between Durham and Lynchburg, Va., and Winston-Salem and Roanoke, Va. The cities of Roanoke, Richmond, Petersburg, Suffolk, and Norfolk, Va., the Southern Railway Company, and the Seaboard Air Line Railway and the latter's receivers have intervened against the complaint.

It is alleged in the complaint, in substance and effect, that defendants' charges for transportation on the traffic included in the numbered classes from 1 to 6, both inclusive, in the Southern Classification, and on grain and grain products, hay, and packing-house products in carloads from Chicago, Ill., East St. Louis, Ill., Louisville, Ky., Columbus and Cincinnati, Ohio, to Durham and Winston-Salem are unreasonable and unjust; that the rates are unduly preferential and unduly discriminatory, as compared with rates on the same class of shipments from the same points to the "Virginia cities;" that rates between Norfolk & Western stations in Virginia and West Virginia on one hand, and Norfolk & Western stations in North Carolina on the other hand, are discriminatory; also that the rates on coal charged by the Norfolk & Western to Durham and Winston-Salem are unjust and unreasonable and unduly discriminatory in favor of Roanoke and Lynchburg and other Virginia cities; and that the rates on lumber charged by the Norfolk & Western from Durham and Winston-Salem to Cincinnati and Columbus and other western points are unjust and unreasonable.

The Norfolk & Western Railway extends from Cincinnati and Columbus on the west to Norfolk on the east, and to Hagerstown, Md., on the north. A division extends from Radford, Va., to Bristol, Tenn. A division of the system also extends south from Roanoke to Winston-Salem, a distance of 122 miles, and another division extends south from Lynchburg to Durham, a distance of 117 miles. Lynchburg is 54 miles east of Roanoke on the main line. Winston-

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Salem and Durham have a population of about 25,000 each. The Southern Railway reaches Durham and Winston-Salem, and the former is also reached by the Seaboard Air Line Railroad. The Louisville & Nashville Railroad extends from Cincinnati to New Orleans and from Nashville to St. Louis, with divisions extending to Norton, Va., and Atlanta, Ga. It does not reach any of the Virginia cities by its own rails, but it handles traffic to those points in connection with the Norfolk & Western by the Norton gateway, in connection with the Chesapeake & Ohio Railroad through the Louisville gateway and in connection with the Southern, via Jellico, Tenn. It has no line north of the Ohio River, except between Evansville, Ind., and St. Louis, Mo. The Cleveland, Cincinnati, Chicago & St. Louis Railway delivers traffic from Chicago to the Norfolk & Western at Columbus and Cincinnati, Ohio.

The so-called "Virginia cities rates" apply to a large number of cities, mostly in Virginia, although a few are situated in adjoining states, and hereafter called "Virginia cities." These cities are served by trunk lines from Norfolk, Newport News, and Richmond, Va., and from the west. The same rates apply to all through shipments to these points from Chicago, East St. Louis, Louisville, and Cincinnati, and to most, if not all, from the east. The southern line of the Virginia cities rate adjustment is the main line of the Norfolk & Western from Roanoke to Norfolk, and includes the cities of Norfolk, Suffolk, Petersburg, Lynchburg, Roanoke, and Salem, as well as all intermediate points. The same rates are applicable to all points on the Chesapeake & Ohio west of Norfolk to Hinton, W. Va.

Existing rates in cents per 100 pounds and short-line distances from Cincinnati, Louisville, East St. Louis, and Chicago to the Virginia cities and to Durham and Winston-Salem are shown by the following tables:

Rates to Roanoke, Lynchburg, Richmond, and Norfolk, Va.

From—	Classes.						Commodities.			
	1	2	3	4	5	6	Grain and grain products.		Hay, C. L.	Packing-house products, C. L.
							Flour, C. L.	Grain, C. L.		
	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
Cincinnati	62	58½	40½	27½	23	18½	13½	18½	23	28
Louisville	84½	73	55½	38	32	26	18	18	32	33
East St. Louis	72	62	47	33	27	22	16½	16½	27	27
Chicago										

Short-line distances.

Distances from—	To Cincinnati.	To Louisville.	To East St. Louis.	To Chicago.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Roanoke.....	456	498	769	790
Lynchburg.....	472	535	806	756
Richmond.....	580	644	915	865
Norfolk.....	667	780	1,001	961

Rates to Winston-Salem and Durham, N. C.

From—	Classes.						Commodities.			
	1	2	3	4	5	6	Grain and grain products.		Hay, C. L.	Packing-house products, C. L.
							Flour, C. L.	Grain, C. L.		
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Cincinnati.....	98	79	64	47	40	31	29½	28½	29	37
Louisville.....	126	106	86	62	53	41	33½	35½	36	43
East St. Louis.....	128	109	86	62	53	41	35 = 34½	34	44	49
Chicago.....	128	109	86	62	53	41				

Short-line distances.

Distances from—	To Cincinnati.	To Louisville.	To East St. Louis.	To Chicago.
	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>	<i>Miles.</i>
Winston-Salem.....	588	565	836	863
Durham.....	578	640	971	873

• Durham.

Rates charged by the Norfolk & Western on shipments from Roanoke to Winston-Salem and from Lynchburg to Durham are shown by the following table:

	Class.															
	1	2	3	4	5	6	A	B	C	D	E	F	H	J	K	
Durham	<i>Cts.</i> 61	<i>Cts.</i> 51	<i>Cts.</i> 42	<i>Cts.</i> 32	<i>Cts.</i> 28	<i>Cts.</i> 21	<i>Cts.</i> 17	<i>Cts.</i> 22	<i>Cts.</i> 21	<i>Cts.</i> 18	<i>Cts.</i> 28	<i>Cts.</i> 42	<i>Cts.</i> 32	<i>Cts.</i> 25	<i>Cts.</i> 14	
Winston-Salem	61	51	42	32	28	21	17	22	21	18	28	42	32	25	14	

	Class.					Commodity.			
	L	M	N	O	P	Flour, C. L.	Grain, C. L.	Hay, C. L.	Pack- ing- house prod- ucts, C. L.
Durham	\$1.90	\$2.20	\$35.00	\$26.00	\$22.00	<i>Cents.</i> 21	<i>Cents.</i> 18	<i>Cents.</i> 18	<i>Cents.</i> 22
Winston-Salem	1.90	2.20	35.00	26.00	22.00	18½	17½	18	22

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These rates are applicable from all the Virginia gateways. The Norfolk & Western, with its western connections, constitute the short line to Winston-Salem and Durham from Chicago. From Louisville, Cincinnati, and East St. Louis the short line to most Carolina points is via the Louisville & Nashville and the Southern and its connections. Rates from Chicago and East St. Louis to Carolina territory are made upon combination, but do not exceed the Virginia cities combinations. From Louisville and Cincinnati through rates are made by using proportional rates to Virginia cities plus locals beyond. The proportional rates are as follows on the numbered classes here involved in cents per 100 pounds:

Class....	1	2	3	4	5	6
Rate....	32	28	22	15	12	10

These proportionals equal the differences between the Chicago rates to the Virginia cities and the locals from Chicago to Cincinnati. For example, the Chicago-Virginia cities rate on first class is 72 cents per 100 pounds and the Chicago-Cincinnati local is 40 cents; the proportional rate is the difference, which is 32 cents. This proportional added to the local from Virginia cities to Winston-Salem and Durham make the through rate from Cincinnati and Louisville 98 cents, first class. The proportionals applied on grain and packing-house products are respectively 11 and 15 cents.

At the time the complaint was filed the only means of railroad transportation at Roanoke was by the Norfolk & Western, and it is one of the contentions of complainant that competitive conditions at Winston-Salem and Durham are such as to warrant lower rates than are maintained at Roanoke. Since the complaint was filed the Virginian Railway Company has constructed a railroad from a point in West Virginia north and west of Roanoke to and through the latter point. The company is now operating its road to tide water and has filed tariffs with the Commission.

For a period of seven years prior to June, 1907, a lumber rate of 16 cents per 100 pounds was maintained from Fairintosh and points north therefrom on the Lynchburg-Durham division of the Norfolk & Western to Pittsburg, Columbus, and to Cincinnati, and other Ohio River points. Fairintosh is located about 10 miles north of Durham. On the date named the Norfolk & Western raised the rate from Fairintosh to the points named to 23 cents per 100 pounds. It is contended by complainant that this raise in the rate is unjustifiable and has resulted in an excessive and unreasonable rate on lumber between the points named.

Shipments of coal to Durham are made under substantially similar circumstances and conditions as to Winston-Salem. The question of the rates charged by the Norfolk & Western for the transportation

of coal from the Pocahontas field to Winston-Salem is fully discussed in the case of the *Board of Trade of Winston-Salem v. Norfolk & Western Railway Company*, 16 I. C. C. Rep., 12, and the decision reached in that case is conclusive of the issue with respect to coal rates presented in this case.

The contention of complainant is that Winston-Salem and Durham are entitled to the same as or lower rates from western points north of the Ohio River than are applied to the Virginia cities from the same points. Questions relating to the adjustment of rates from both the east and west to the Virginia cities and points south thereof have been considered by the Commission in a number of cases. *Danville v. Southern Ry. Co.*, 8 I. C. C. Rep., 409; *Wilmington Tariff Asso. v. C., P. & V. Ry. Co.*, 9 I. C. C. Rep., 118; *Charlotte Shippers' Asso. v. Southern Ry. Co.*, 11 I. C. C. Rep., 109. It is not necessary to go into detail with respect of the influences which have resulted in the existing rates to the Virginia cities. It appears in this case, as well as in numerous others, that defendants' rates to the Virginia cities were made under competitive conditions. Therefore the rates made thereto can not properly become the bases of comparisons with rates to points which were not within the scope of similar influences. Competition of the character which existed at the Virginia cities has never obtained at Winston-Salem and Durham. With respect of the contention of complainant that as Roanoke was served by but one railroad company competitive conditions do not exist there which in any manner compel the making of lower rates than to the North Carolina cities in question, which are served by two or more railroads, it is to be said that the rates from the west to Roanoke were put in effect April 5, 1887, by the Kanawha Dispatch, which was a fast freight line operating over the Chesapeake & Ohio and its connections. The rates were published from Chicago and Roanoke via Basic, Va., in connection with the Shenandoah Valley Railroad. In 1890 the Norfolk & Western acquired the Shenandoah Valley road, over which the Virginia cities rates were applied to Roanoke, and accepted the rates as it found them, and they have remained in effect substantially without change to the present time. The industries and business of Roanoke were built up and have been maintained under the existing rate adjustment, and we are of opinion that it should not be disturbed at this time.

Winston-Salem and Durham are nearer Cincinnati and all points west thereof than most of the cities taking the Virginia cities rates. They are situated on a line of railway which reaches Cincinnati, as is the case with many of the Virginia cities. The short line from Louisville and East St. Louis to these points is via another route. If rates were constructed upon the consideration of distance alone,

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complainant's contention that the North Carolina cities are subjected to unjust discrimination would have much force. It is well settled that distance is always a factor to be taken into consideration in determining either the reasonableness of a rate by itself or in considering its relation to rates to other points; but it is equally well settled that distance alone is not controlling. Competition is an important element, and there are various other considerations, all of which must be taken into account in determining the fact whether a particular rate or a system of rates is or is not reasonable. Shippers and receivers of freight are entitled as a matter of law to rates that are reasonable, and that do not operate to unduly discriminate against them. Because of conditions which exist at the Virginia cities, and do not exist at Winston-Salem and Durham, complainant's charge of unjust discrimination is not sustained upon this record. Trunk Line conditions have been extended to the Virginia cities through circumstances above described, and Trunk Line rates are made to these points where the density of traffic characteristic of Trunk Line territory does not exist. The extension of the Virginia cities rates to Winston-Salem and Durham would result in moving Trunk Line rates farther south and aggravating a situation which has given rise to much complaint.

Are the through rates from western points in question to Winston-Salem and Durham reasonable?

It is argued by the defendants that rates to Carolina territory from the points in question are made on the zone system, and that any reduction of rates to Winston-Salem and Durham would affect and disturb rates to a number of points in a wide extent of territory. Because defendants have constructed a system of rates on a zone or blanket system is not reason sufficient, in our judgment, to justify the collection of unreasonable charges to any point. Every city is entitled to the advantage of its location and may not lawfully be subjected to high freight charges merely because carriers, for reasons of convenience or otherwise, include it with a number of other points in surrounding territory, which latter points are not similarly situated. We have considered these rates from a view point of distance and transportation conditions, by the amount of revenue received as shown by per ton-mile calculations, and drawn into consideration all matters which in any way relate to traffic between the points involved.

The intervening carriers assert that no readjustment of rates by way of reductions to Winston-Salem and Durham can be made without affecting other points not reached by the Norfolk & Western and thus diminishing revenue of other carriers to an undue extent. We are not unmindful that it is our duty to consider rates applied over the entire territory likely to be affected by a change in rates to

particular points. It is doubtless true that a reduction in rates to Winston-Salem and Durham to the Virginia cities basis would disarrange the whole system of rates now based thereon and made with reference thereto. We have heretofore found that conditions at Winston-Salem and Durham do not justify the extension to them of the Virginia cities rates. This is not equivalent, however, to a finding that rates to Winston-Salem and Durham are reasonable. So far as the evidence shows practically all through traffic from the west to Winston-Salem and Durham passes through Cincinnati and over the lines of the Norfolk & Western. Some of the traffic originating in St. Louis, Mo., is delivered to the Norfolk & Western by the Louisville & Nashville at Norton, Va. The intervening carriers do not in any significant amount participate in traffic to Winston-Salem and Durham from the points in question. As we see the situation, it does not follow as a necessary consequence that the reduction of rates to Winston-Salem and Durham to a reasonable basis would necessarily entail a reduction of rates to other points in North Carolina. It might be true that certain reductions would necessarily be made, but it would be to a few points only and to a very limited extent. So far as we are advised, no other points in North Carolina are similarly situated. Certainly no point south of the Virginia cities is served by a single carrier from Cincinnati. The intervening carriers also pressed to our attention the possibility of disaster to their interests which might result from granting the prayer of the complainants. Winston-Salem and Durham are less than 125 miles from the nearest of Virginia cities on the line of the Norfolk & Western which reaches Cincinnati. While it is true that transportation conditions are to some extent different on the lines extending south from Roanoke and Lynchburg than obtain on the main line from Roanoke to Norfolk, yet the difference by no means warrants rates to Winston-Salem and Durham on through traffic that are so much higher than are maintained to main-line points. Competition has no doubt affected rates to points on the main line of the Norfolk & Western, but as we see it this competition has to no considerable extent been reflected to points south. There is no justification to be found in this case for the charges made on shipments to Winston-Salem and Durham on through traffic from the western points involved.

It is to be noted that Durham is about 50 miles greater distance from the western points than Winston-Salem and might therefore take somewhat higher rates, but the carriers have heretofore applied the same rates to both points, and the difference in distance is not great compared with the whole distance from St. Louis, Chicago, and the other points. The distance from each to the Virginia cities is about the same and we see no reason why they should not be continued on the same basis.

It is also contended by complainant that the local rates from Roanoke and Lynchburg to Winston-Salem and Durham are unreasonable. To support the contention it is pointed out by complainant that the local rates from Cincinnati to Roanoke, a distance of 466 miles, is 62 cents per 100 pounds, first class, and that for the haul of 122 miles from Roanoke to Winston Salem 61 cents is charged.

Defendants assert that the local rates from all the Virginia cities to all points in North Carolina are upon the same basis, and that any reduction in the local rates to the points in question will disarrange the entire adjustment. We doubt that the serious consequences feared by the defendants would result, but unjust rates to any point may not properly be sustained merely because such point has been included with others. In other words, all points are entitled to reasonable rates, distance and other conditions considered.

If any point included in an adjustment is subjected to unreasonable rates, the conclusion must follow that the adjustment is wrong. The Commission in no case should give its sanction to an adjustment of rates which imposes upon shippers from and to any point in it unreasonable freight charges.

It was admitted by the Norfolk & Western at the hearing that to no point on its line were as high rates made, mileage alone considered, as are applied to Winston-Salem and Durham from Roanoke and Lynchburg, respectively. Examination of tariffs shows that, as above stated, for a distance of 122 miles the Norfolk & Western makes a first class rate not to exceed 47 cents from and to points on its system. It also appears that the first class rate from Hagerstown, Md., to Roanoke, Va., for a distance of 239 miles is 54½ cents. We can find no justification in the record for the imposition by the Norfolk & Western for its haul of 122 miles from Roanoke to Winston-Salem and for its haul of 117 miles from Lynchburg to Durham of 61 cents per 100 pounds, first class, with proportionate charges on the other classes. No conditions of transportation are shown which justify the imposition of these rates. The evidence shows that the rates now in effect have been maintained for many years. During that time Winston-Salem and Durham have grown to cities of importance and there has been constantly increasing traffic, both local and through. No consideration seems to have been given to increased volume or to other factors which go to justify lower freight charges.

Upon full hearing, investigation, and consideration of all the facts, circumstances, and conditions appearing, it is our opinion, finding, and conclusion, first, that the existing rates of the defendant Norfolk & Western Railway Company, hereinbefore stated, for the transportation of traffic included in the classification of said defend-

ant applicable to shipments from Roanoke and Lynchburg, Va., to Winston-Salem and Durham, N. C., respectively, are unjust and unreasonable in so far as they exceed the rates which will be prescribed as the just and reasonable maximum rates to be charged in the future on said traffic, as set forth in the following table, to wit:

Per 100 pounds.											Per barrel.	Per 100 pounds.	
Class.											Class.	Class.	
1.	2.	3.	4.	5.	6.	A.	B.	C.	D.	E.	F.	H.	K.
Cts. 52	Cts. 42	Cts. 34	Cts. 25	Cts. 21	Cts. 17	Cts. 15	Cts. 18	Cts. 15	Cts. 18	Cts. 21	Cts. 30	Cts. 25	Cts. 10½

Per ton 2,000 pounds.		Per carload.		
Class.		Class.		
L.	M.	N.	O.	P.
\$1.60	\$1.85	\$31.00	\$21.00	\$17.00

The Norfolk & Western Railway Company will be required to establish and maintain for the future rates not in excess of those above indicated. It is assumed that the carrier will adjust its rates to points intermediate Durham to Lynchburg and Winston-Salem to Roanoke to accord with the rates above prescribed.

Second, that the existing rates of the said defendant Norfolk & Western Railway Company, as hereinbefore stated, for the transportation of traffic included in the said classes first to sixth, inclusive, as governed by Southern Classification, from Cincinnati, Ohio, to Winston-Salem and Durham, N. C., respectively, are unjust and unreasonable in so far as they exceed the rates which will be prescribed as the just and reasonable maximum rates, in cents per 100 pounds, to be charged in the future on said traffic, as set forth in the following table, to wit:

Class ---	1	2	3	4	5	6
Rate ----	84	71	57	42	37	29

Assuming that the present method of constructing through rates by the defendant carriers from Chicago, Ill., St. Louis, Mo., and Louisville, Ky., and by the Norfolk & Western Railway Company from Columbus, Ohio, to Winston-Salem and Durham, N. C., respectively, will be continued, it is our view that such injustice in the rates from these points of origin to the destinations involved may result from the present excessive rates of the Norfolk &

Western Railway Company from Cincinnati, will be removed and that, for the present at least, no order need be made as to the traffic moving from the said points of origin other than from Cincinnati.

We find no justification, upon the facts appearing, for condemning as unreasonable or otherwise unlawful the commodity rates on flour, grain, hay, and packing-house products eastbound in carloads and lumber westbound in carloads.

An order will be entered in accordance with the conclusions herein announced.

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No. 2285.

AMERICAN CREOSOTE WORKS, LIMITED,
v.
ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted May 20, 1910. Decided June 11, 1910.

Defendants' petition for rehearing of this case denied.

Frederic D. McKenney, John S. Flannery, G. Bowdoin Craighill
and *Charles Payne Fenner* for complainant.

Sidney F. Andrews and *Ed. Baxter* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The report of the Commission in this case (18 I. C. C. Rep. 212) contains four separate findings, three of which are adverse to the defendants. Complainant sought to recover damages in the sum of \$581,346.51, and of this amount the Commission found that it was entitled to reparation which aggregated, according to the record, \$9,168.62. The petition for rehearing, hereinafter designated the petition, assails two of the three adverse findings on the ground that the findings of fact and the conclusions appearing in the Commission's report are "radically wrong, inconsistent, and wholly unsupported by the evidence, and, therefore, result in very great injustice to the defendants."

The two findings attacked will be considered in connection with the allegations of the petition, but first we desire to refer to the other finding of the Commission adverse to the defendants, which we regard as highly important, i. e., that the complainant was subjected to unjust discrimination and suffered damages by reason of the manipulation of a rate on cross-ties in such manner as to prevent the use thereof by complainant. Following the doctrine in *Washer Grain Co. v. M. P. Ry. Co.*, 15 I. C. C. Rep., 147, and *Joynes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, no damages were awarded under a \$500,000 claim or under

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a \$56,000 claim, but complainant was left to pursue its remedy, if any, in the courts.

The details of the transaction upon which our conclusion is based are set forth on pages 214 and 215 of the Commission's report *supra*. This finding is not disputed or even mentioned in the petition.

I.

The first finding attacked in the petition is the award of reparation in the sum of \$3,770.38 on shipments of ties from Southport, La., to East St. Louis, Ill.

The Commission has carefully reconsidered the record in connection with statements in the petition and the objections made therein to its report, and again finds the facts to be substantially as stated in the report—that complainant actually paid the yellow-pine lumber rate of 20 cents per 100 pounds on the aggregate weight of 25,112 treated ties from Southport, La. (within the switching limits of New Orleans), to East St. Louis, Ill., while at the same time there was in force a rate of 14 cents per tie from New Orleans to East St. Louis via the same line applicable on untreated ties to Carbondale, Ill., the plant of complainant's competitor, the Ayer & Lord Tie Company, and treated ties beyond. The tariff naming this 14-cents-per-tie rate was established at the request and for the sole use of the Ayer & Lord Company, and remained continuously in force from March 28, 1904, until complaint was filed in this case.

The Commission's conclusion was that the said rate of 20 cents per 100 pounds charged complainant was unreasonable and unjustly discriminatory to the extent that it exceeded a rate of 16.8 cents per tie, treated, from Southport to East St. Louis. Reparation was awarded in the difference between the charges actually collected and the amount which would result from applying rate of 16.8 cents per tie to said 25,112 ties.

The following table shows the charges paid by complainant on the actual weights, the amount based on the reasonable rate fixed by the Commission, and the difference between the two, which is the sum of the reparation:

25,112 ties, at 20 cents per 100 pounds.....	\$7,989.20
25,112 ties, at 16.8 cents per tie.....	4,218.82
Amount of reparation awarded.....	3,770.38

The petition admits the 14-cents-per-tie rate from New Orleans to East St. Louis, the 20 cents per 100 pounds rate charged complainant, the charges paid on basis thereof, and the number of ties shipped.

The petition states that a rate of 18 cents per 100 pounds was reasonable because it was the rate held to be reasonable on yellow-pine lumber by the Commission in the *Central Yellow Pine case*. This

case has no relation whatever to the Commission's finding in the lumber case and the circumstances and conditions of the two cases are substantially dissimilar. The record in this case contains information as to the cost of the movement of cross-ties, which information was not before the Commission when considering the lumber case. For example, at the hearing J. M. Daly, formerly superintendent of transportation for defendant Illinois Central, testified that—

the movement of ties from Mississippi points to Carbondale costs 60 per cent less than the movement of lumber and other shipments in other cars, going to other destinations, and that—

in 1906, 1907, and 1908, during January and July—a summer and a winter month, taken at random—68 per cent of all the ties going into Carbondale for us were loaded in coal cars.

It is not denied that these conditions would also attach to the movement of ties from Southport to East St. Louis over defendant's line.

The petition states that the rate actually charged complainant was 31.8 cents per tie and alleges that the Commission's report found that 36 cents per tie was charged complainant. That this allegation is in error is shown by the language of the report:

We find that the rate of 20 cents per 100 pounds, amounting to approximately 36 cents per tie, charged on the shipments specified was unjust, unreasonable, and unjustly discriminatory.

In stating the amount to be *approximately* 36 cents, the report uses the figure stated on page 82 of the record, but it is immaterial whether this figure was actually 31.8 cents or 36 cents in view of the Commission's finding that the reasonable charge would have been 16.8 cents per tie and that reparation should be made, as hereinbefore shown, in the difference between the amount actually paid and the amount which would have been assessed at the reasonable rate. The following simple calculations prove that the Commission's finding is in exact accord with the finding advanced by the petition as being accurate and that it is impossible to construe our report as finding that a rate of 36 cents per tie was charged complainant:

1. The basis *actually* found by the Commission (using figures in Exhibit C):

25,112 ties, at 20 cents per 100 pounds, charges collected.....	\$7,989.20
25,112 ties, at rate of 16.8 cents per tie, fixed by the Commission.....	4,218.82
Amount of reparation awarded.....	3,770.38

2. The basis advanced by the petition is—

25,112 ties, at 31.8 cents per tie.....	\$7,989.20
25,112 ties, at 16.8 cents per tie.....	4,218.82
Amount of reparation.....	3,770.38

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3. The basis *alleged* by the petition to have been found by the Commission is—

25,112 ties, at 36 cents per tie.....	\$9,040. 32
25,112 ties, at 16.8 cents per tie.....	4,218. 82

Amount of reparation that would have been awarded under allegation of petition.....	4,821. 50
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The petition (p. 7) alleges that the naming of New Orleans in tariff 1595-A as taking the 14-cents-per-tie rate was due to clerical error. The tariffs and supplements on file show that this rate was continuously in force from New Orleans from March 28, 1904, until this complaint was filed. Complainant's exhibit reproduced on page 216 of our report is alleged in the petition to be unfair. This we do not concede. The assumption of the petition (p. 9) that the table is intended to be applied to ties actually shipped is wholly erroneous. The testimony of complainant's witnesses was to the effect that it was not able to secure contracts for ties at points north of New Orleans in competition with the rates enjoyed by Ayer & Lord. Consequently if it were necessary to make the table apply to actual movements, it could never have been constructed, because the very discriminations charged prohibited such movements. Complainant intended the table to show what rates would have been exacted from it in comparison with the rates enjoyed by Ayer & Lord from and to the same points if ties had actually moved. All the points included in the table are named in tariff 1595-A, which presumably contains points from and to which ties would be likely to move, and the record shows that ties did move from and to several of the points so named.

The table has no relation whatever to the shipments from tie-producing points to Southport. Such shipments are considered independently of the shipments from Southport to East St. Louis involved in the second finding of the Commission now under discussion, and the observations in the petition on pages 11 and 12 are therefore misleading. The ties referred to (p. 11) as moving the average distance of 142 miles are not involved in this finding, but are involved in the third finding, which includes ties moving only from the forest to Southport and in which only ties originating in Mississippi could be included because only these moved interstate. Under the circumstances, it would be unfair and improper to consider that movement under this finding. The record shows that complainant did move ties from the vicinity of Hammond, La., which would involve a haul to New Orleans of only 53 miles.

The petition (pp. 13 and 14) attempts to show that the ties purchased by Ayer & Lord and those purchased by complainant were from different parts of Mississippi, and therefore unlike in character, and clearly

intimates that the Ayer & Lord ties which were granted an estimated weight of 100 pounds per tie in the tariffs of defendants were lighter in weight than the ties of complainant, which the record shows weighed considerably more than 100 pounds per tie. According to the figures of the petition, there was a movement from southern Mississippi to Carbondale of 70,541 ties, which, if regarded in the petition as a negligible quantity would have been a considerable quantity for the complainant. It will be noted that the total number of ties on which reparation is awarded under this finding is but 25,112. The statement with regard to the location of loblolly and long-leaf pine is not established in the record. W. A. Bowers, cutter of cross-ties at Hammond, La., who has been in the business twenty-five years and is at the present time engaged in cutting ties for both Ayer & Lord and complainant, testified in regard to loblolly pine that—

There is a good deal in south Mississippi and a good deal in north Mississippi
 * * * It predominates all over the pine district.

In an endeavor to show that the Commission's finding of 16.8 cents as a reasonable rate is unfair, the petition contains (pp. 15, 16) two tables purporting to give a proper comparison between movements via the Ayer & Lord plant and via complainant's plant. These tables are as follows:

Rate charged on 20 ties, 1 ton, at 14 cents per tie to East St. Louis, originating at a point 142 miles north of New Orleans, to be treated in transit at Carbondale—estimated weight 100 pounds per tie—and from Carbondale to East St. Louis at estimated weight of 165 pounds per tie. (As per Tariff 1595-A.)

Distance to Carbondale.....	miles..	473
Distance from Carbondale to East St. Louis.....	do....	90
Weight per tie from point of origin to Carbondale.....	pounds..	100
Weight per tie from Carbondale to East St. Louis.....	do....	165
<hr/>		
2,000 pounds from point of origin (dry ties) to Carbondale, transported....	miles..	473
3,300 pounds from Carbondale (treated ties estimated weight 165 pounds per tie) to East St. Louis, 90 miles, equivalent to 2,000 pounds transported....	miles..	148
Total haul of 2,000 pounds.....	do....	621

Rate on 20 ties, 1 ton, on relatively equal basis from same point of origin, to be treated at Southport and reshipped to East St. Louis.

Distance from point of origin to Southport.....	miles...	142
Distance Southport to East St. Louis.....	do....	710
Weight per tie from point of origin to Southport.....	pounds..	100
Weight per tie from Southport to East St. Louis.....	do....	165
<hr/>		
2,000 pounds from point of origin (dry ties) to Southport, transported.....	miles..	142
3,300 pounds from Southport (treated ties, 165 pounds per tie) to East St. Louis, 710 miles, equivalent to 2,000 pounds transported.....	miles..	1,172
Total haul of 2,000 pounds.....	do....	1,314

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Considering the haul via Carbondale as 100 per cent, the haul via Southport is 211.5 per cent.

On the above basis the rate to East St. Louis via Carbondale being 14 cents per tie, the rate via Southport to East St. Louis would be *29.6 cents per tie*.

The petition alleges that this calculation would put complainant on an absolutely relative equality with Ayer & Lord, and the Commission is asked to revise its finding to the basis of 29.6 cents per tie instead of 16.8 cents per tie.

These tables so far disregard the facts on which the Commission based its finding as to justify the conclusion that they are founded on a mistaken interpretation of the record. It is admitted that during the period of complainant's shipments defendants had in force from New Orleans to East St. Louis a rate per tie of 14 cents, with transit privilege limited to Carbondale, this rate being voluntarily established. Considering the facts of record, the Commission found that the 20-cents-per-100-pounds yellow-pine-lumber rate collected on complainant's shipments was unjust and unreasonable and unjustly discriminatory in so far as it exceeded a rate of 16.8 cents per tie. It may be added that the rate fixed by the Commission affords the defendants for the service performed a per-ton-mile revenue slightly in excess of the per-ton-mile revenue under the 14-cent rate.

That the second table of the petition is in error and can not be seriously considered is evidenced by the fact that it includes the movement of 142 miles from the tie-producing points to Southport and estimates the weight per tie from Southport to East St. Louis at 65 pounds more than the weight per tie into Southport. As hereinbefore shown, the ties moving this average distance of 142 miles into Southport are considered as separate and distinct from the movement from Southport to East St. Louis. Complainant's ties moving into Southport from the forest aggregated 242,023, while the movement from Southport to East St. Louis now under consideration consisted of 25,112 ties, and the record does not show that any of these ties were actually included in the movement to Southport. In including the aforesaid haul from the producing points to Southport in this table which purports to show the complete movement of complainant's 25,112 ties treated at Southport and shipped to East St. Louis, the petition disregards or overlooks the testimony of complainant's witness quoted on page 27 of the petition that all of the ties from the producing points to Southport were *export ties*. The record shows that the full-cell process adds approximately 30 pounds to the weight of a tie, consequently it is unfair to figure on an excess of 65 pounds which, when applied to the long haul of 710 miles

in the second table, and only 90 miles in the first table, shows a comparative result in defendants' favor that is altogether misleading.

The refund received by complainant upon ties moving into Southport on defendants' lines, referred to on pages 19, 20, and 21 of petition, is under a provision in the tariff applying solely on inbound rates to Southport and is conditioned upon the reshipment of the ties after treatment to points on defendants' lines. Consequently it did not apply on such of the 242,023 ties moving into Southport as were exported and the testimony of complainant's witness is that practically all of these ties were exported. Furthermore, as the refund is only made out of the inbound rate to Southport, it has no bearing on the 20-cents-per-100-pounds rate charged on the 25,112 ties shipped from Southport to East St. Louis, which rate was found by the Commission to be unreasonable.

The letter from complainant, reproduced on pages 22 and 23 of petition, refers to ties covered by claim of complainant under the Commission's *Yellow Pine* decision. The shipments there referred to are also included in the claim for reparation in this case, and the letter expressly states that while complainant is entitled to recover on one or the other of the two claims "we, of course, know that we are not entitled to payment of both claims." The point here raised is merely one of checking the shipments and eliminating them from one or the other of the claims, and the complainant voluntarily undertakes to do this.

II.

The second finding of the Commission assailed in the petition is the award of reparation on shipments of 242,023 ties from points in the tie-producing district southward to New Orleans. Our conclusion is stated in the report as follows:

Under all the circumstances we find that the charges assessed on the shipments of complainant were unjust, unreasonable, and unjustly discriminatory in that they were not based upon an estimated weight of 100 pounds per tie but were assessed at actual weight, and reparation will be awarded in a sum equal to the amount collected on the actual weight in excess of 100 pounds per tie * * *.

The record shows that the defendants had one rule for assessing freight charges on complainant's shipments and an entirely different rule for assessing freight charges on the shipments of Ayer & Lord, and that the difference in these rules was not offset by a corresponding adjustment of rates. The report of the Commission states that the amount of reparation shown in the exhibits of complainant is \$5,398.24, but allows the defendants sixty days within which to check the shipments and determine the actual amount before order of

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reparation is issued. It appears that the sum named was based on a weight of $87\frac{1}{2}$ pounds per tie for certain of the ties which were 7 feet in length, but as the finding of the Commission fixed the estimated weight at 100 pounds per tie for all the ties upon which reparation was awarded, the amount of reparation will be less than \$5,398.24.

The petition claims that the tariff naming the per-tie rates to Carbondale "applied only to standard railroad ties and therefore was not and could not have been made applicable to the 7-foot ties which constituted 44 per cent of complainant's shipments," and that said 7-foot ties could not compete with the standard ties shipped to Carbondale.

W. A. Bowers, cross-tie contractor, testified that during the past three or four years he had supplied ties to both the complainant and Ayer & Lord from the same sections, between Gloster, Miss., and Crystal Springs, Miss.; that the specifications were the same with the exception of the length, some being 7 feet and some 8 feet long; that he had frequently shipped these ties to both firms out of the same yard and that they were exactly alike. It would hardly be seriously disputed that defendants would apply the rate applicable to a standard tie, 6 inches by 8 inches by 8 feet, to a tie of the same material, 6 inches by 8 inches by 7 feet. Unquestionably no higher rate could properly be demanded.

Upon the subject of competition between complainant and Ayer & Lord, the petition, at page 31, recites that the locations of the plants would of necessity, even on relatively equal rates, prevent competition between them. The record does not justify this conclusion. The locations of the plants give to one certain advantages and to the other other advantages, and had relatively equal rates prevailed it is entirely probable that competition would have resulted; in fact, complainant did secure a contract for shipment of 500,000 ties to Memphis when tariffs contained an 11-cent rate open to all, and it is admitted of record that the defendants thereupon canceled this rate, but left in force a rate of 10 cents per tie from Montgomery, Miss., to Memphis via the Grenada plant of Ayer & Lord.

Referring to the statement, page 31 of petition, that the Grenada plant was wholly an Illinois Central Railroad plant, the record at pages 608 and 609 shows that there were at least 30,000 ties treated at Grenada for others than the Illinois Central. The record also shows that on February 14, 1907, the complainant entered into a contract to furnish the East St. Louis and Suburban Railroad Company with 40,000 ties f. o. b. East St. Louis, of which amount only 25,112 ties, as hereinbefore shown, were shipped under the excessive 20-cents-per-100-pounds rate.

The quotation from the opinion of the Commission on page 34 of petition, concerning the dissimilar conditions between movements of ties north and south, when fairly taken in connection with the Commission's language at that part of the opinion, clearly refers to the difference in cost of service, and by no fair interpretation can it be construed as applying to competitive conditions.

After full consideration of the petition for rehearing and all the statements and arguments therein, and a review of the record in this case, we are of the opinion and so find, that the conclusions of the Commission as set forth in the report and herein reaffirmed are just and are in accord with the facts, and that the application for rehearing should be, and the same hereby is, denied.

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No. 2611.

HARBOR CITY WHOLESALE COMPANY OF SAN PEDRO,
CALIFORNIA,

v.

SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 11, 1910. Decided June 11, 1910.

1. Upon a finding that Los Angeles was originally made a terminal rate point because of its proximity to the harbor of San Pedro and has since maintained that rate status; and upon the further finding that the actual and potential competition through the harbor of San Pedro contribute at this time to the maintenance of terminal rates to Los Angeles, it is *Held*, That the defendants are guilty of an unlawful discrimination against San Pedro in not making it also a terminal rate point.
2. A rate adjustment that deprives San Pedro of the benefit of its own geographical position while according the benefit of it to Los Angeles constitutes an undue discrimination. If actual or potential water competition through the harbor of San Pedro is recognized by the defendants in the Los Angeles rates it can not lawfully be obscured in the rates to San Pedro itself. When one community leans upon another for its competitive rates, the benefit of such rates ought not to be denied to the point where the competitive conditions exist.

Miner P. Goodrich and Kuster, Loeb & Loeb for complainant.

F. C. Dillard, P. F. Dunne, C. W. Durbrow, and William F. Herrin for Southern Pacific Company.

E. B. Peirce for Chicago, Rock Island & Pacific Railway Company.

E. N. Olark and T. L. Philips for Denver & Rio Grande Railroad Company.

F. C. Dillard and P. L. Williams for Oregon Short Line Railroad Company.

W. B. Kelly for San Pedro, Los Angeles & Salt Lake Railroad Company.

Robert Dunlap and T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The all-rail rates from the east to San Pedro, in the state of California, are based upon the through rates to Los Angeles plus the local rates from Los Angeles to San Pedro, and this for many years
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has been the relation of rates as between the two points. In its petition, the complainant prays that San Pedro may be designated as a Pacific coast terminal and may be accorded the same rates that are now in effect to Los Angeles, San Diego, San Francisco, and numerous other points, in California and adjacent states, commonly referred to as terminal points and taking the so-called terminal rates. It is not alleged that the rates to San Pedro are in themselves excessive and unreasonable, but it is contended that they are discriminatory as against San Pedro when compared with the rates to other points taking terminal rates.

San Pedro Bay lies about 125 miles north of San Diego and 500 miles south of San Francisco. The city of Los Angeles is 22 miles inland from the bay. A portion of the harbor of San Pedro is commonly referred to as the inner and another part as the outer harbor. The city of San Pedro, with a population of 6,000 or 7,000 inhabitants, lies partly on the outer harbor and partly on the inner harbor. Adjacent to it is the town of East San Pedro, with a small population, but having rather extensive lumber interests; and close at hand is the village of Wilmington. These three towns have recently been merged with and now form a part of the city of Los Angeles. The physical connection between the several communities has been accomplished by including within the enlarged municipal limits a strip of land, about half a mile wide and locally known as "the shoe-string," that extends from Los Angeles proper to San Pedro Bay and harbor.

Much testimony was introduced at the hearing to show the condition of the inner and outer harbors and their capacity to float the extensive commerce which is confidently expected to reach that point in the future. We shall not go into these details. It will suffice to say that the general government has appropriated \$2,900,000 for the outer harbor and breakwater, and \$1,638,000 for the inner harbor. Substantial work has been done under these appropriations. We are advised also that the city of Los Angeles has arranged to spend \$10,000,000 in the development of the harbor within the next ten years, and that \$3,000,000 has been made immediately available. Much dredging is going on, and docks, wharves, and slips are being constructed. Apparently the people of Los Angeles realize the need of creating at San Pedro a harbor capable of taking care of a large share of the commerce that is expected to flow through the Panama Canal when completed. The depth of the water in the harbor is said to be sufficient at ordinary tide to permit vessels drawing as much as 24½ feet to come in with safety. About 18,000 linear feet of wharves have been constructed. During the calendar year of 1908, vessels of all classes, including 1,559 coasting steamers, 118 coasting

schooners, 4 barkentines moving coastwise, 9 foreign steamships, 1 foreign ship, and 1 foreign bark entered the harbor. The commerce of the port amounts in the aggregate to over 1,000,000 tons a year, 80 to 85 per cent of which, it is said, consists of lumber and its products coming from North Pacific points. Low-grade commodities, such as pig iron, coke, coal, cement, and foreign fertilizer make a substantial part of the tonnage. Most of the 45,000 tons of general merchandise received through the harbor during the year 1908 came through San Francisco. We are told that 95 per cent of all the tonnage that enters the harbor moves through to Los Angeles and the interior, the other 5 per cent staying at San Pedro. It will be remembered, however, that San Pedro is a place of comparatively small dimensions while Los Angeles has over 300,000 inhabitants.

The rails of the principal defendant and the Pacific Electric reach San Pedro proper, while the San Pedro, Los Angeles & Salt Lake runs into East San Pedro, just across the harbor. The latter road has joint rates with the Santa Fe to and from East San Pedro, and the Pacific Electric moves freight over the rails of the Salt Lake to East San Pedro. The steamers of the Jebsen, the Cosmos, the Dollar, the W. R. Grace, and the Pacific Coast Steamship Company lines, all stop at San Pedro. The Jebsen Line operates from Salina Cruz, the Pacific terminus of the Tehuantepec National Railway, north to British Columbia. It carries high-grade commodities, some of which originate at Liverpool, Hamburg, and elsewhere and are destined to Los Angeles. The Cosmos Line, carrying principally nitrate of soda, runs from Antwerp around the Horn, north to British Columbia and return. The Dollar vessels bring oriental freight from China and Japan. The W. R. Grace Company imports nitrate of soda, largely in tramp vessels. The Pacific Coast Steamship Company maintains a monthly service between San Pedro and Mexico, being precisely the same service that it gives to San Francisco.

The American-Hawaiian line is the strongest competitor of the railroads for Pacific coast traffic. The vessels assigned to the Atlantic service run from New York to Puerto Mexico, where the traffic is delivered to the Tehuantepec National Railroad. At Salina Cruz, the Pacific terminus of that carrier, it is again turned over to American-Hawaiian vessels. San Diego is the first American port of call for these vessels and San Francisco the second. They proceed as far north as Seattle and Tacoma. But they do not stop at San Pedro. The larger volume of the tonnage of this line originates at New York and in the Atlantic seaboard territory. Occasionally it gets some traffic from as far west as Des Moines, in the state of Iowa. Its tariffs are not filed with the Commission, but we are advised that its rates from New York are the same to San

Diego, Los Angeles, and San Francisco. These rates do not apply to San Pedro, for, as just stated, its vessels do not stop at that point. If a shipment is destined to Los Angeles over that line, it is unloaded at San Diego and carried thence to Los Angeles by the Santa Fe. It is said, in fact, that 90 per cent of the traffic unloaded at San Diego by this line is subsequently carried by the Santa Fe into Los Angeles county, the rate of the Santa Fe to Los Angeles being absorbed by the American-Hawaiian line. The Santa Fe publishes proportional rates from San Diego and San Francisco applying only on traffic delivered to it at those ports by water carriers, and it is our understanding that it is this proportional rate from San Diego that is absorbed by the American-Hawaiian line. It may be noted here that these proportional rates from San Diego to Los Angeles are exactly the same as the local rates from San Pedro to Los Angeles; the regular local rates of the Santa Fe between San Diego and Los Angeles are more than twice as high as the proportional rates. Neither Santa Barbara nor Ventura is a port of call for steamers of the American-Hawaiian line, and neither place, so far as the all-rail routes are concerned, enjoys terminal rates from the east. The all-water traffic to either place is turned over by the American-Hawaiian line to the Pacific Coast Steamship Company either at San Diego or San Francisco. It is our understanding, however, that the traffic handled in this way by the American-Hawaiian Steamship Company to Santa Barbara and Ventura is almost negligible in quantity. When the American-Hawaiian line carries traffic from the east that is destined to San Pedro, it is discharged at San Diego and carried to destination either over the rails of the Santa Fe through Los Angeles or directly to the port of San Pedro in the steamers of the Pacific Coast Steamship Company. In the first instance the San Pedro merchant is required to bear the burden of the local rate from Los Angeles to San Pedro, and in the second instance he must bear the burden of the local rate of the Pacific Coast Steamship Company from San Diego to San Pedro; the Los Angeles merchant, on the other hand, has the rate from San Diego to Los Angeles absorbed for him, as heretofore stated.

The Panama Line operates entirely through San Francisco. It publishes the same through rates to San Francisco and Los Angeles. Its traffic for Los Angeles, the volume of which is not large, as we understand the matter, is discharged at San Francisco and reshipped in the steamers of the Pacific Coast Line to San Pedro or to Port Los Angeles. Out of the through rate as published from New York the rail line from San Pedro and Port Los Angeles into Los Angeles receives its full local charge, the balance being divided under joint agreement between the carriers concerned, including the Pacific

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Coast Steamship Company. It is to be observed that traffic to Santa Barbara, which is not a port of call for the Panama Line, is handled in the same way and with like absorptions. No freight is handled by this line for Ventura. But when the traffic is destined to San Pedro and does not pass through its harbor and beyond to Los Angeles, the Panama Line does not absorb the charge of the Pacific Coast Line from San Francisco.

It will thus be noted that, while traffic that comes into its harbor and passes over its docks and is carried thence to Los Angeles enjoys the benefit of these very substantial absorptions, similar traffic, if it stops on the docks at San Pedro, must pay in addition either the local charges of the Pacific Coast Line from San Francisco to San Pedro or its local charges from San Diego. Although it is asserted that any vessel that may get into and out of the harbor at San Diego may as safely get into and out of the harbor at San Pedro, neither of these great coastwise lines stops at San Pedro. But they absorb the charges to Los Angeles from San Francisco on the one hand and from San Diego on the other. And to complete the statement of the rate isolation of San Pedro, it should be added that although San Diego is 100 miles more distant from Los Angeles than is San Pedro, and the haul for a large part of the way is said to be one of unusual difficulty, the rail rates from both ports to Los Angeles are the same.

We have referred to these details of the water-and-rail movement to Los Angeles and San Pedro in order that the whole situation may be fully before us. The attack that the petitioners make, however, is upon the all-rail rates to San Pedro, and the complaint is that they are discriminatory as against that city as compared with the all-rail rates to the so-called terminal points. The history of the rate adjustment to Los Angeles, as we gather the facts from the record, is substantially as follows: In 1869 Los Angeles and Wilmington were connected by a railroad built by the city and county of Los Angeles. Merchandise arriving at the port of San Pedro was lightered to Wilmington, the rail terminus, and transported thence to Los Angeles by rail. At this time Los Angeles was not connected with the east by rail. The Southern Pacific Company, however, was building south of the San Joaquin Valley, and because of the obstacles presented by the Tehachapi Mountains its intention was to build directly east by way of the valley of the Colorado River. As an inducement to it to build south of the Tehachapi the entire stocks and bonds of this Los Angeles-Wilmington railroad were turned over to the Southern Pacific Company by the city of Los Angeles. In addition to this it was given about 60 acres of land in Los Angeles for terminal facilities. It is also said that it was presented by the city with a certain 7 per cent municipal or county bonds running for

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a period of twenty years, but the details of this part of the transaction are not clearly explained of record. The Southern Pacific Company operated this road before its main line, which was finished in 1876, was built into Los Angeles.

The record is not clear as to the exact year in which Los Angeles was given terminal rates. Counsel for the defendants states that—

The first tariff showing terminal rates is T. C. No. 1, effective April 1, 1884. This is the first definite record showing terminal rates. However, it seems certain these rates were in effect several years prior.

There are other indications of record that terminal rates were accorded to Los Angeles several years prior to the date of the tariff to which counsel here alludes; but however that may be it was not until 1888 that the Santa Fe built its coast line to San Diego, thus enabling Atlantic coast traffic to reach Los Angeles through that port. It seems reasonably clear, therefore, that the terminal rates were not originally given to Los Angeles because of any water competition through the port of San Diego. It is true that the Santa Fe operated its trains into Los Angeles as early as 1885, but it did this over the tracks of the Southern Pacific from Colton. It was not until 1888 that it ran its trains into Los Angeles over its own tracks and it was not until 1888, as just stated, that its line from San Diego to Los Angeles was completed. Finding terminal rates already in effect to Los Angeles over the Southern Pacific, it naturally adjusted its own rates to that point on that basis. The same conditions led the San Pedro, Los Angeles & Salt Lake Railroad to put in terminal rates when it reached Los Angeles in 1905. Moreover, it appears that neither Redondo nor Santa Monica enter into the history of the terminal rate situation so far as Los Angeles is concerned; for Redondo did not become known as a harbor until 1888, which was some years after Los Angeles had been given terminal rates, and the long wharf at Santa Monica was not built until 1893. Throughout the record we find it asserted by witnesses for the defendants that wherever terminal rates have been granted it was because of competition through the Pacific ports; and this is the only explanation that has ever been made of the rates to the 152 so-called Pacific coast terminals. Bearing in mind, therefore, that there was no rail connection between Los Angeles and San Diego, and that there was rail connection between Los Angeles and San Pedro, when terminal rates were granted to Los Angeles, we feel we may safely conclude that it was solely because of the water competition through San Pedro that Los Angeles was originally given terminal rates.

Having been accorded terminal rates because of its proximity to the port of San Pedro, Los Angeles from that time forward has maintained that rate status under the transcontinental schedules.

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But San Pedro itself has not been made a terminal rate point. After San Diego had been connected by rail with Los Angeles and its harbor had been prepared to receive steamships and a route was thus opened to Los Angeles for merchandise from the Atlantic seaboard, it was made a Pacific coast terminal. But although the harbor of San Pedro is receiving a growing tonnage that is already several times larger than that of San Diego, and while it has docks and sufficient depth to afford a comfortable and safe berth to the steamships that carry commerce from the eastern seaboard to San Diego and San Francisco, for reasons of their own these vessels do not stop at San Pedro. It is intimated that there is some understanding between the Santa Fe and the American-Hawaiian Line that the latter shall not stop its ships at San Pedro, but no proof of that nature was offered. Whatever may be the explanation, San Pedro has not been made a regular port of call either for the vessels of the American-Hawaiian Line or for those of the Panama Line. Nevertheless general merchandise originating at the Atlantic seaboard moves through the harbor of San Pedro to Los Angeles and this tonnage, described by the defendant's counsel as being "at times considerable," reaches destination in competition with the all-rail rates here in question. We attach importance to this fact, even though such tonnage is proportionally small when compared with the volume of the traffic reaching Los Angeles from the eastern seaboard through the harbor of San Diego.

In *Lindsay Bros. v. B. & O. S. W. R. R. Co.*, 16 I. C. C. Rep., 6, we said:

While water competition may be availed of by a carrier as its justification and excuse for rates that are lower than would otherwise be lawful, the existence of such competition is not in itself a ground upon which a shipper may demand a lower rate. It is the privilege of a carrier, in its own interest, to meet such competition, but it is not the privilege of a shipper to demand less than normal rates because of the existence of a competition which the carrier in its own behalf does not choose to meet.

There have been rulings of like import in other cases before this Commission, and under the law as it now stands it must be taken as settled that carriers, substantially at their pleasure, may or may not adjust their rates to competitive conditions so long as no undue discrimination or unlawful preference results. But does not the refusal of the defendants to make San Pedro a terminal rate point constitute an unlawful discrimination in view of all the facts before us? Although the movement of general merchandise from the Atlantic seaboard through San Pedro to Los Angeles is small, such a movement actually exists. That being the case, upon what grounds may the Commission find that, to the extent of its volume, that movement has no influence in compelling the maintenance of terminal rates to Los Angeles? As Los Angeles originally acquired the status of a terminal

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rate point because of its proximity to San Pedro, upon what theory may we now disregard that proximity and the actual traffic that moves through the harbor to Los Angeles and hold that neither contributes at this time to the maintenance of that status? Certainly the record warrants no finding based on any nice calculations of that sort. It gives us no justification for holding that the movement through San Diego alone compels terminal rates to Los Angeles and that the movement through San Pedro is too small to be taken into account and therefore may be disregarded as an element that tends to maintain Los Angeles as a terminal rate point. As heretofore stated, 1,692 vessels of all kinds entered the harbor of San Pedro during the year 1908 and brought in over a million tons of traffic. During the same year but 594 vessels entered the port of San Diego, with 438,084 tons of traffic. During the year 1909 some 2,210 vessels entered San Pedro laden with domestic and foreign commerce aggregating 1,366,130 tons. During the same year but 651 vessels entered the harbor of San Diego with 427,001 tons of traffic on board.

We can not lightly set such figures aside and hold that it is San Diego that makes the Los Angeles rates and that San Pedro contributes nothing to that result. In our judgment, either the alleged competition by water is altogether a fiction and does not warrant the present relation of rates as between Los Angeles and San Pedro, or the harbor of San Pedro, small though its actual traffic from the Atlantic seaboard may be, is too big to justify the defendants in saying that it has no relation to the rates that they maintain to Los Angeles. The assistant general freight agent of the Salt Lake Line, when testifying as a witness for the defendants, attributed the terminal rates to Los Angeles to competition through all the ports, and, speaking of the movement by the sea of traffic destined to Los Angeles from the Atlantic seaboard, says that "if San Diego didn't handle it, San Pedro probably would." San Pedro does actually "handle" some of it, and the potential competition through its harbor, to which the witness alludes, is so proximate and substantial and its facilities so ample, that if the harbor of San Diego were suddenly closed, merchandise now on the sea destined to Los Angeles could be handled through San Pedro without substantial delay in its arrival at destination.

As the competition through the harbor of San Pedro originally gave terminal rates to Los Angeles and now contributes, as we are compelled by the record to find, to the maintenance of those rates, we arrive again at the inquiry heretofore propounded, namely: Are the defendants guilty of an unlawful discrimination against San Pedro in not making it also a terminal rate point? To this question, after careful reflection, we have been able to see but one clear answer.

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We hold that a rate adjustment that deprives San Pedro of the benefit of its own geographical situation while according the benefit of it to Los Angeles constitutes a discrimination against San Pedro that is undue and unjust and therefore unlawful. To recognize to any extent in the rates to Los Angeles either the actual or the potential competition through San Pedro without giving recognition to such competition in the rates to San Pedro itself is a discriminatory and unlawful adjustment. If such competition is recognized in the Los Angeles rates we see no justice in obscuring it in the San Pedro rates. When one community leans upon another for its competitive rates the benefit of such rates ought not to be denied to the point that creates the competitive conditions.

We see no explanation for the failure of the defendants to make San Pedro a terminal rate point unless it be that Los Angeles is a place of large and growing commercial importance, while San Pedro itself, as a commercial community, is as yet practically undeveloped and therefore of small importance. There are intimations of that kind in the record, one witness for the defendants saying that Los Angeles is large enough to induce water competition while San Pedro in itself is not. The difference, however, in the importance of the two communities can not in law be accepted as a justification for an undue discrimination in rates. As was said in *Holdzkom v. M. C. Ry. Co.*, 9 I. C. C. Rep., 42, 52—

One of the underlying principles of the act to regulate commerce is equality between great and small.

In *D. G. H. & M. Ry. Co. v. I. C. C.*, 74 Fed. Rep., 803, 822, the same thought is expressed in the statement that—

A discrimination can not rightfully be made against one locality merely because it is smaller than another locality.

In reaching these conclusions herein we attach no weight to the complainant's contention that San Pedro and Wilmington have lately been incorporated into the municipality of Los Angeles and on that ground are entitled to Los Angeles rates. While the two communities have been merged into one municipality for the purposes of civil government and administration, this does not necessarily merge the two into one community from a transportation point of view. Dealing with the matter from the standpoint of transportation only, we find that the competitive traffic from the eastern seaboard through the harbor of San Pedro to Los Angeles contributes to the maintenance by these defendants of the terminal all-rail rates to the latter point and their failure or refusal to extend those rates to San Pedro itself and to give it the benefit of what its advantageous geographical situation helps to secure to Los Angeles is an undue discrimina-

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combination. At various times between December 10, 1908, and February 7, 1909, inclusive, the Chicago, Burlington & Quincy Railroad Company, the Union Pacific Railroad Company, and the St. Joseph & Grand Island Railway Company withdrew their concurrences in the tariffs carrying the joint rates, leaving the Omaha and Lincoln combination in effect on traffic to points reached by their several lines. This proceeding was accordingly instituted on April 28, 1909, for the purpose of compelling the restoration of the joint rates which the complainants formerly enjoyed. The defendants thereupon reestablished the joint rates previously in effect to Kansas, Colorado, and Wyoming points, and it appears, therefore, that the complaint is substantially satisfied as far as rates to that territory are concerned. The controversy is apparently narrowed to rates from the various producing points to western Nebraska.

Prior to June 1, 1908, the rates on yellow-pine lumber from southern points to Lincoln and Omaha were 24 cents and 23 cents, respectively. After the decision in *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, 13 I. C. C. Rep., 319, in which the Commission ordered that the rate to Lincoln should not exceed that applying to Omaha, the rates to both cities were raised to 25 cents. Subsequently, in the case of *Greater Des Moines Committee v. C. G. W. Ry. Co.*, 14 I. C. C. Rep., 294, the Commission held that the rate to Des Moines should not exceed the rates to Lincoln and Omaha. In complying with this order the carriers increased the Lincoln and Omaha rates to 26½ cents, at the same time reducing the Des Moines rate from 27½ cents to 26½ cents. The defendants Chicago, Burlington & Quincy Railroad Company, Union Pacific Railroad Company, and St. Joseph & Grand Island Railway Company were thereupon desirous of increasing the joint rates to points reached by their lines conformably with the increase in the rates to Lincoln and Omaha, but the originating carriers refused to give their consent. The carriers named, therefore, canceled their concurrences in the tariffs naming the joint rates, leaving the Omaha and Lincoln combination in effect. As previously stated, joint rates have been reestablished to Colorado, Kansas, and Wyoming points, whereas traffic to western Nebraska is still subject to the Omaha and Lincoln combination.

The complainants ask that the joint rates in effect prior to December 10, 1908, be again made effective from the following producing points: Clarks, Standard, Fisher, Victoria, Longville, Woodworth, Yellow Pine, Loring, Zwolle, Cravens, and Pickering, in Louisiana; Diboll, Tex.; Malvern, Draughon, and Warren, in Arkansas, and Grandin, Mo.

In the case of the *Commercial Club of Omaha v. A. & S. R. Ry. Co.*, 18 I. C. C. Rep., 532, the Commission has reestablished the rate of 25 cents to Omaha and Lincoln. This rate, in conjunction with the

local rates from Omaha and Lincoln to Nebraska points, which have recently been lowered by an act of the Nebraska legislature, will doubtless secure to the complainants the rates which they desire to the greater part of the territory in controversy. There remains, however, an area in western Nebraska intermediate to points reached by the defendants' lines in Colorado and Wyoming, to which through rates, made up of the Omaha and Lincoln combination, will exceed the Colorado-common-point and Cheyenne rates. In our judgment, the rate to Colorado common points should be observed as maximum to points in western Nebraska east of the Colorado line, while the Cheyenne rate should be observed as maximum to points on the line of the Union Pacific Railroad Company from Ralton to Smeed, Nebr., inclusive.

An order will be entered requiring the defendants to establish rates for the transportation of yellow-pine lumber and its products in carloads from the various producing points named in the complaint to western Nebraska points reached by the lines of the defendants, Chicago, Burlington & Quincy Railroad Company and Union Pacific Railroad Company, which shall not exceed the following:

To points on the line of the Union Pacific Railroad Company from Josselyn to Barton, Nebr., inclusive, 37 cents per 100 pounds.

To points on the line of the Union Pacific Railroad Company from Ralton to Smeed, Nebr., inclusive, 40 cents per 100 pounds.

To points on the line of the Chicago, Burlington & Quincy Railroad Company from Smithfield to Venango, Nebr., inclusive, and from Oxford Junction to Sanborn, Nebr., inclusive, 37 cents per 100 pounds.

Reparation will be awarded on all shipments moving to points reached by the lines of the defendants in Kansas, Colorado, and Wyoming during the period while the higher rates were in effect. Reparation will also be awarded on all shipments moving to western Nebraska points, the rates to which are herein found to have been unreasonable. The case will be held open for further testimony as to the amount of reparation.

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No. 1659.
FLORIDA COTTON OIL COMPANY
v.
CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted March 23, 1910. Decided June 7, 1910.

1. Through routes established on cotton seed from points on the Central of Georgia Railway to Jacksonville, Fla., and reasonable rates therefor prescribed.
2. Reparation on certain shipments of cotton-seed oil awarded and on certain shipments of cotton seed denied.

C. H. Pillsbury, B. G. Stone, and C. P. Kendall for complainant.
Ed. Baxter, R. Walton Moore, and Sloss D. Baxter for Central of Georgia Railway Company.
Sloss D. Baxter for Seaboard Air Line Railway.
W. E. Kay and Sloss D. Baxter for Atlantic Coast Line Railroad Company.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

In its petition and the several amendments thereto the complainant prays, first, for the establishment of through routes and joint rates on cotton seed from 284 points in the state of Georgia, and one point in the state of Alabama, to Jacksonville, in the state of Florida; second, for the fixing of reasonable rates on that traffic for the future; and third, for an award of reparation on certain shipments made by the complainant prior to the date of filing its petition herein. The points of origin involved in the proceedings are on the line of the Central of Georgia Railway, which was the only carrier named as defendant in the original petition. By amendment the Atlantic Coast Line Railway Company and the Seaboard Air Line Railway were subsequently brought into the controversy, those lines being essential links in the through routes to Jacksonville and therefore necessary parties defendant in any order granting the relief prayed.

When the complainant established its cotton-oil mill at Jacksonville in 1901 the average price of cotton seed was about \$12 a ton.

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The price at this time is ordinarily over \$30 a ton, the increase being assigned, among other causes, to the fact that some 25 or 30 other mills, constructed since 1901 in the territory from which the petitioner formerly obtained its seed, now compete in that territory in the purchase of the raw product. Besides enabling the producers to demand a higher price, this competition has forced the petitioner out into a wider area for the purchase of seed, a condition of affairs that is universal in the cotton-oil industry, all mills in the south finding it necessary now to reach out farther for their raw material than was formerly the case. The complainant, for instance, now gets less than half its seed in Florida. In making purchases it has been compelled to go as far north as Darlington, in the state of South Carolina, and as far west as Montgomery, in the state of Alabama; and notwithstanding the wider territory to which it has extended its buying operations, the amount of seed the complainant has been able to purchase for crushing at its Jacksonville mill has diminished from 12,000 tons in 1905 to 7,000 tons in 1907.

The Central of Georgia runs through an extensive cotton-producing country and consequently is in a position to supply mills with a substantial tonnage of seed. Although it is ordinarily to the interest of a carrier occupying such a relation to a commodity that is in general demand to establish through routes and joint rates, and to take such other steps as will enable the commodity to move freely to points of consumption, we have nevertheless observed a more or less definite disinclination on the part of carriers to move cotton seed to mills that are not on their own lines. It was seemingly admitted of record that this had been the attitude of the principal defendant. Before the petition was filed it declined to issue through billing and compelled the complainant to receive its cotton-seed shipments at junction points and there enter into new contracts with the connecting lines to destination. There are 23 points on which combination rates to Jacksonville may be based, and as a result of this large opportunity for making mistakes the complainant has frequently been compelled to pay charges substantially higher than would have been assessed had the shipments been forwarded through other junctions and over other routes carrying lower rates. While its overcharge claims for misrouting have had attention by the principal defendant, the confusion arising out of the absence of through routes and joint rates has worked to the complainant's disadvantage and has imposed upon it unnecessary difficulties and embarrassments. It is asserted that out of 16 recent shipments 10 were overcharged in the sense that they moved through junctions upon which the combination rate was higher than the rate available through other junctions. As a consequence of this method of handling the traffic the complainant, as we

are advised, has been required at considerable expense to keep itself informed of the rates in force through the various junctions, and it asserts that but for its own efforts and diligence in that regard it would be compelled to pay excessive charges on at least 60 per cent of its shipments.

Under these circumstances we think the complainant's contention that it is entitled to through routes and joint through rates from these producing points to Jacksonville is sustained by the record. We are not advised that the connecting lines, brought in as codefendants as heretofore explained, contest the complainant's right to such relief. The objection is made by the principal defendant on the ground that it does not desire to publish joint rates from a long list of stations if that can be avoided; that it now issues through billing; and that its local agents have been instructed to apply to the central office by wire for routing instructions and the lowest rate combination when cotton seed is tendered for shipment. This arrangement, however, does not seem to meet the reasonable requirements of the complainant or to relieve it of the expense and annoyance of keeping itself advised as to the best available routes and rates. In this very proceeding are involved claims for reparation that have been denied by the defendant and which would not have arisen had through routes and joint rates been in effect. The principal defendant has joined with its connections in establishing through routes and publishing joint through rates on cotton-seed meal and hulls from mill points on its line to Jacksonville. We see no hardship in requiring it to join with its connections in also establishing through routes and joint rates on cotton seed. The movement of cotton seed to Jacksonville seems to be not only an entirely natural movement but one that may be expected to increase in the future. Under all the circumstances we feel therefore that the complainant is entitled to the benefit of established through routes and joint rates. That is the general obligation laid upon carriers under the terms of section one of the act, and the showing here made is sufficient to justify us in requiring the defendants to comply with the complainant's demand in this particular.

From competitive points on the line of the Central of Georgia the defendants publish joint rates which are approximately the same to both Savannah and to Jacksonville. From noncompetitive points the lawful through charge is the combination of the local base point rate of the Central of Georgia to Savannah, or other junction point, plus the rate of its connections beyond to Jacksonville. The complainant contends that the defendants ought to establish the same joint rates from the local stations to Jacksonville as are applicable from the contiguous competitive points. In support of this view of what it regards as a proper relation of rates the complainant offered certain

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exhibits, one showing a comparison of the rates to Jacksonville with the rates to Savannah and Chattanooga; and another presenting a comparison between rates on cotton seed and rates on cotton-seed meal and hulls. It will not be necessary to examine these exhibits in detail. It will suffice to say that the rates of the Central of Georgia for a haul over its own rails from these points of origin to Savannah do not constitute a particularly helpful test of the reasonableness of the rates for a two-line haul to a point so dissimilarly located as Jacksonville. Nor are we inclined to test the reasonableness of the rates from these noncompetitive points of origin to Jacksonville by rates to the same destination from competitive points in this territory. Because of the differences in the conditions surrounding the traffic the rates to Chattanooga are also of doubtful usefulness as a measure of the reasonableness of the rates to Jacksonville. Certainly none of the comparisons offered by the complainant suffice to justify reductions in rates that are not otherwise shown to be unreasonable.

On cotton-seed meal and cotton-seed hulls the defendants publish joint rates to Jacksonville from local mill points on the lines of the Central of Georgia that are on a level with the rates on those commodities from competitive points in the same territory. The complainant compares these rates with the combination rates on cotton seed to Jacksonville from the same local points, and calls attention to the fact that the adjustment presents an instance of rates on manufactured products that are lower than the rates on the raw material, which of course is contrary to the usual relation of rates as between a manufactured product and the raw material from which it is made. The defendants explain that certain elements peculiar to the cotton-seed milling industry account for this departure from the general practice of carriers in that regard. The product of the cotton seed having the greatest value is the oil, but it forms a small part of the total weight of the products resulting from crushing a ton of seed. The meal and hulls constitute three-fourths of the weight of the products resulting from the milling. They are more in the nature of by-products, and the process of milling adds little to their value. While it is true that cotton-seed meal at this time is worth about as much as cotton seed, both the meal and the hulls are largely used for feeding purposes and do not ordinarily move to any great distance from the mill. Coming into competition with other feeding materials, as well as with the meal and hulls of other mills, the defendants assert that competitive rates are essential to insure their free movement. And these considerations we think are entitled to proper weight when considering any relation of rates on cotton seed and cotton-seed products.

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For the reasons heretofore stated, we do not consider that the complainant has established its contention that the rates to Jacksonville are unduly discriminatory as against that point when compared with the rates to Savannah. Upon the whole record we are of the opinion, however, that in a number of instances the rates to Jacksonville from local points on the lines of the Central of Georgia are unjust and unreasonable; and we find that any rates to that destination from the local points of origin named in the complaint are excessive to the extent that they exceed the rates hereinafter specified; which latter rates we further find to be reasonable as maximum rates for the future.

The maximum rate for the future on cotton seed from Pate to Jacksonville must not exceed \$2.60 a ton of 2,000 pounds, and the maximum rate from Lewiston must not exceed \$3.10. The rates for the future from other points of origin intermediate to Macon and Savannah must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Lawton to Jacksonville must not exceed \$2.70 a ton, and the maximum rate from Westover must not exceed \$2.90. The rates for the future from other points of origin intermediate to Millen and Augusta must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Donegal to Jacksonville must not exceed \$2.60 a ton, and the maximum rate from Brewton must not exceed \$2.90. The rates for the future from other points of origin intermediate to Dover and Brewton must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Ivey to Jacksonville must not exceed \$3.10, and the maximum rate from Porterdales must not exceed \$3.40 a ton. The rates for the future from other points of origin intermediate to Gordon and Covington must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Lorane to Jacksonville must not exceed \$3.10 a ton, and the maximum rate from Jonesboro must not exceed \$3.50. The rates for the future from other points of origin intermediate to Macon and Atlanta must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Van Buren to Jacksonville must not exceed \$3.10 a ton, and the maximum rate from White Hall must not exceed \$3.40. The rates for the future from other points of origin intermediate to Macon and Athens, except

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Machen, must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Bridges to Jacksonville must not exceed \$3.30 a ton, and the maximum rate from Rock Springs must not exceed \$3.90. The rates for the future from other points of origin intermediate to Griffin and Chattanooga must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Wilkinsons to Jacksonville must not exceed \$3.10 a ton, and that rate must also be observed as a maximum from the other points intermediate to Barnesville and Thomaston.

The maximum rate for the future on cotton seed from Nankipooch to Jacksonville must not exceed \$3 a ton, and the maximum rate from Bexton must not exceed \$3.50. The rates for the future from other points of origin intermediate to Columbus and Raymond must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Smithville to Jacksonville must not exceed \$2.70 a ton, and the maximum rate from Terra Cotta must not exceed \$3. The rates for the future from other points of origin intermediate to Macon and Eufaula must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Wright to Jacksonville must not exceed \$2.90 a ton, and the maximum rate from Perry must not exceed \$3. The rates for the future from other points of origin intermediate to Fort Valley and Perry must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Ashe to Jacksonville must not exceed \$2.60 a ton, and the maximum rate from Columbia must not exceed \$3.80. The rates for the future from other points of origin intermediate to Smithville and Columbia must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from points intermediate to Cuthbert and Fort Gaines must not exceed \$2.90 a ton.

The maximum rate for the future on cotton seed from Everett to Jacksonville must not exceed \$2.90 a ton, and the maximum rate from Box Springs must not exceed \$3.50. The rates for the future from other points of origin intermediate to Fort Valley and Columbus must be scaled between those two figures on the combination mileage upon which the present rates are based.

The maximum rate for the future on cotton seed from Lacrosse to Jacksonville must not exceed \$2.80 a ton, and the maximum rate from Glen Alta must not exceed \$3.60. The rates for the future from other points of origin intermediate to Americus and Columbus must be scaled between those two figures on the combination mileage upon which the present rates are based.

No reparation will be awarded on the shipments set up in the original complaint. In a supplemental complaint filed with the original complaint a claim for reparation is made on two carload shipments of cotton-seed oil moving to Jacksonville over the rails of the Atlantic Coast Line, one originating at Orangeburg and the other at Sumter, both being points in the state of South Carolina. The charges were actually collected at $23\frac{1}{2}$ cents per 100 pounds, although the rate then legally in effect over the route of the movement was 32 cents. There was therefore an undercharge on these shipments on the basis of the effective rate as then published. But the combination of local rates then in effect between Orangeburg and Jacksonville was $21\frac{1}{2}$ cents and between Sumter and Jacksonville was $22\frac{1}{2}$ cents. At the same time the Seaboard Air Line maintained a rate of $17\frac{1}{2}$ cents from Orangeburg and of $18\frac{1}{2}$ cents from Sumter. Under these circumstances, and in view of the admission of the Atlantic Coast Line that the charges assessed on these shipments were unreasonable, and of the fact that all the defendant carriers have since published a rate of 18 cents from Orangeburg and $18\frac{1}{2}$ cents from Sumter, we find that the rates collected on these two carloads were unreasonable to the extent that they exceeded the present rates, and that the complainant is therefore entitled to reparation in the sum of \$64.16, with interest from June 28, 1909. We further find that the present rates will be reasonable maximum rates on cotton-seed oil for the future between those points.

An order will be entered awarding reparation as hereinabove indicated; and also requiring the defendants to establish through routes to Jacksonville on cotton seed shipped from the points named in the complaint, through such junction points as they may select, and to establish and maintain joint through rates not in excess of those hereinabove specified.

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Nos. 2249 and 2205.

BEEKMAN LUMBER COMPANY

v.

LOUISIANA RAILWAY & NAVIGATION COMPANY ET AL.

Submitted May 25, 1909. Decided June 3, 1910.

Reparation awarded for excess charges resulting from the misrouting of two shipments of lumber.

G. H. Lowry for complainant:

Emerson Bentley for Louisiana Railway & Navigation Company.

J. S. Weitsell for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The above numbered cases were consolidated for convenience and will be disposed of in one report. The complainant corporation ships lumber from points in the state of Louisiana on the Louisiana Railway & Navigation Company and routes the same via the St. Louis Southwestern, the Chicago & Eastern Illinois, and other railroads to various northern destinations. The initial carrier delivers the cars to the St. Louis Southwestern at Shreveport, La., and that carrier in turn to the Chicago & Eastern Illinois at Thebes, Ill. Ordinarily the lumber is shipped in care of complainant at Cypress, Ill., a point 33 miles north of Thebes on the Chicago & Eastern Illinois. When the lumber reaches Thebes, an intermediate point, it is reconsigned or rebilled from that point to the town where the purchaser has his place of business. In such case the local rate from Thebes to Cypress is not charged, but a through rate applies, made up of the joint rate of 16 cents to Thebes plus the local or joint rate, as the case may be, to final destination.

This reconsignment privilege is authorized by Supplement No. 1 to Chicago & Eastern Illinois tariff I. C. C. No. 2221, the material provisions of which are as follows:

1. When a diversion or reconsignment is requested, involving change of destination or consignee of carload freight, and the order for the diversion or reconsignment is 19 I. C. C. Rep.

placed in the hands of the agent of the railroad company in time to permit the diversion to be arranged for prior to arrival of car at destination or at specified reconsigning point, one change in the destination or consignee will be permitted, without extra charge, under the following conditions:

- (a) The original bill of lading is surrendered when reconsigning order is placed.
- (b) The complete identity of the freight is preserved.
- (c) That the point at which shipment is diverted or reconsigned is on direct line to ultimate destination, and no additional haul is involved. (See third section.)
- (d) The rate from point of origin to destination to prevail, provided all the roads over which the shipment travels join in the same—otherwise, the sum of the locals will prevail from and to the reconsigning point.

These provisions in substance permit reconsignment or diversion at any point on the line of the Chicago & Eastern Illinois, and the application of the through rate from point of origin to destination, providing all the roads over which the shipment moves join in the rate; otherwise the sum of the locals is charged to and from the reconsigning point. Whether or not the other participating carriers join in the reconsigning privilege would seem to be immaterial, at least in the particular instances hereinafter mentioned, as the rates between points west and east of the Mississippi River as a general rule are based upon that river, and Thebes is a Mississippi River crossing.

Complainant's reason for consigning shipments in the first instance to Cypress instead of Thebes, where the reconsigning actually takes place, appears to be to avoid delay in crossing the Mississippi River to Thebes. It seems that when cars are destined to Thebes proper there is much trouble in transporting them across the river because they are held in storage on the west bank awaiting disposition, while if destined to a point beyond Thebes they are promptly delivered to the connecting carrier.

In these cases reparation is sought for damages resulting from misrouting, and the facts relating to the particular shipments involved appear to be as follows:

In case No. 2249 the complainant on October 31, 1907, shipped from Atlanta, La., to Detroit, Mich., a carload of lumber weighing 51,600 pounds, upon which there was charged and collected the sum of \$268.62. In the original bill of lading Cypress was named as the destination of the shipment, but for the purpose of availing itself of the reconsigning privilege at Thebes complainant gave the following routing instructions:

Via Shreveport care of the St. L. S. W. Ry. via Thebes, Ill., care of Chicago & Eastern Illinois Ry.

If the car had been routed according to these instructions the amount properly charged would have been \$154.80, based upon the joint rate of 16 cents from Atlanta to Thebes and a rate of 14 cents from Thebes to Detroit. The through rate from Atlanta to Cypress,

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the original destination, was 21 cents, made up of the joint rate of 16 cents to Thebes and the local of the Chicago & Eastern Illinois of 5 cents from Thebes to Cypress. In this connection it is to be noted that the 21-cent rate to Cypress applied also via another route, the factors of which were a joint rate of the Louisiana Railway & Navigation Company, the Yazoo & Mississippi Valley, and the Illinois Central of 16 cents from Atlanta to Cairo and the 5-cent local of the Chicago & Eastern Illinois from Cairo to Cypress.

It is conceded that the initial carrier did not follow the routing instructions of complainant. Instead of taking the car to Shreveport and there delivering it to the St. Louis Southwestern, it took the car to Baton Rouge and delivered it without routing instructions to the Yazoo & Mississippi Valley, which moved it to its connection with and delivered it to the Illinois Central, presumably at Memphis or in that vicinity. The Illinois Central thereupon moved the car, not by the direct line to Cypress through Cairo, to which latter point the 16-cent joint rate from Atlanta applied and from which the local to Cypress was 5 cents, as above stated, but instead took the car via another line to Johnston City, Ill., a point about 33 miles north of Cypress, and there delivered it to the Chicago & Eastern Illinois, which hauled it back to Cypress. It was there reconsigned to Detroit through Johnston City over the Chicago & Eastern Illinois, the Grand Trunk Western, and the Detroit Grand Haven & Milwaukee. The rate from Cypress to Detroit by this route was 14 cents, and that rate was charged and collected. But for the transportation from Atlanta to Cypress the defendants charged and collected 38 cents, which appears to be the lawful rate by the route over which the shipment moved. This rate was made up of 7 cents, which was the initial carrier's proportion of the joint rate to Cairo, the local rate of 26 cents of the Yazoo & Mississippi Valley and Illinois Central from Baton Rouge to Johnston City and the 5-cent local of the Chicago & Eastern Illinois from Johnston City to Cypress.

Upon these facts we hold that complainant is entitled to reparation in the sum of \$113.52 with interest thereon from December 1, 1907. Of this amount \$25.80 with interest should be paid by the initial carrier, the Louisiana Railway & Navigation Company, and \$87.72 with interest by the Illinois Central. It appears plain to us that the Illinois Central, which received from the Yazoo & Mississippi Valley without routing instructions a car of lumber moving from Atlanta to Cypress, was bound to forward it to that destination by the direct route over which to its knowledge the cheaper rate from Atlanta applied, and the Illinois Central had this knowledge, for it was a party to the joint rate above mentioned of 16 cents from Atlanta to Cairo and the car was moving over the route to which that joint rate

applied. If the Illinois Central had taken this car to Cairo and there delivered it to the Chicago & Eastern Illinois it would have reached Cypress on a combination rate of 21 cents and could have been reconsigned at that point, as it was in fact, and moved to Detroit at the further charge of 14 cents, or a total of 35 cents. In that case, notwithstanding the mistake of the initial carrier, complainant would have paid only 5 cents more per 100 pounds, or \$25.80, than would have accrued if the car had moved in accordance with the routing instructions. In other words, the direct and proximate consequences of the initial misrouting were an additional charge of 5 cents, the local from Thebes to Cypress. The balance of excess charges resulted from the subsequent error of the Illinois Central in taking the car to Johnston City instead of Cairo. Following our recent decision in the *Duluth & Iron Range case*, 18 I. C. C. Rep., 485, we reach the conclusions above stated and award reparation on this shipment accordingly.

In case No. 2205 the complainant on November 9, 1907, shipped a carload of lumber weighing 42,200 pounds from Atlanta, La., to Chicago, Ill. The original destination of this shipment was Cypress, Ill., and complainant gave the same routing instructions and for the same reasons as in case No. 2249. If the car had been routed according to these instructions the amount properly charged would have been \$109.72, based upon the joint rate of 16 cents from Atlanta to Thebes and a rate of 10 cents from Thebes to Chicago. The through rate from Atlanta to Cypress, the original destination, was 21 cents, made up of a joint rate of 16 cents to Thebes and the local of the Chicago & Eastern Illinois of 5 cents from Thebes to Cypress. The through rate to Chicago based on the Cypress combination was 31 cents.

It is conceded that the initial carrier did not follow the routing instructions of complainant. Instead of taking the car to Shreveport and there delivering it to the St. Louis Southwestern, it took the car to Baton Rouge and delivered it without routing instructions to the Yazoo & Mississippi Valley. At this point the agent of that carrier made a clerical error and billed the car to Chicago instead of Cypress. The Yazoo & Mississippi Valley thereupon moved the car to its connection with and delivered it to the Illinois Central, which completed the transportation to Chicago. When the car arrived in Chicago the Illinois Central, which in the meantime appears to have discovered or been advised of the mistake in billing at Baton Rouge, sent it to Marion, Ill., at which place it usually delivered shipments to the Chicago & Eastern Illinois for Cypress. On arrival of the car at Marion the Chicago & Eastern Illinois refused acceptance and advised the Illinois Central that it had no reconsignment order for the car

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and that complainant had no industry at Cypress. The Illinois Central thereupon notified complainant and received instructions to forward the car to Chicago consigned to the American Car & Foundry Company. This was done and the car finally arrived in Chicago with charges of \$160.70, which complainant paid. This amount was made up as follows:

L. R. & N. proportion of Cairo rate 7 cents per cwt., Atlanta to Baton Rouge..	\$29. 54
Y. & M. V. and Illinois Central, Baton Rouge to Marion, 18 cents per cwt....	75. 96
Illinois Central, Marion, Ill., to Chicago, 10 cents per cwt.....	42. 20
Illinois Central demurrage charge, Marion, Ill	10. 00
Illinois Central reconsigning charge, Marion, Ill.....	3. 00
Total.....	160. 70

It will thus be seen, notwithstanding the misrouting by the initial carrier, that if the mistake in billing at Baton Rouge had not occurred and the Illinois Central had taken the car to Cairo and there delivered it to the Chicago & Eastern Illinois, as would have been its duty in that case, the car would have reached Cypress, its original destination, at a charge of 21 cents and could have been there rebilled to Chicago for an additional charge of 10 cents, or a total of 31 cents, as above stated, instead of the 35 cents collected, which was the combination on Marion by the route over which the shipment moved. In other words, the direct and proximate consequences of the initial misrouting were an additional charge of 5 cents, as in the other case, the local from Thebes to Cypress, which would not have accrued if the shipment had moved according to routing instructions. The balance of excess charges, except the item of \$10 demurrage, resulted from the subsequent error of the Yazoo & Mississippi Valley in rebilling the car at Baton Rouge to Chicago instead of Cypress. The Illinois Central had no tariff provision authorizing a demurrage charge under the circumstances of this case, and that company should refund the demurrage, which was wrongfully collected. *Munroe & Sons v. Michigan Central R. R. Co.*, 17 I. C. C. Rep., 27.

Upon these facts, and following the *Duluth & Iron Range case, supra*, we hold that complainant is entitled to reparation in this case in the sum of \$50.98, with interest from December 1, 1907, of which \$21.10 with interest should be paid by the initial carrier, the Louisiana Railway & Navigation Company, \$19.88 with interest by the Yazoo & Mississippi Valley, and \$10 with interest by the Illinois Central.

Orders will be entered accordingly.

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No. 2691.

FREEMAN LUMBER COMPANY

v.

ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY
COMPANY ET AL.

Submitted March 17, 1910. Decided June 10, 1910.

Rates on cypress lumber from Gleason, Ark., to points reached by lines of defendants in Missouri, Kansas, Illinois, Nebraska, Iowa, etc., found unreasonable. Reasonable rates prescribed for the future.

G. H. Lowry for complainant.

James C. Jeffery, H. J. Campbell, and Charles E. Perkins for defendants.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

The complainant corporation is engaged in the manufacture, sale, and shipment of cypress and hard-wood lumber. Its mills are located at Gleason, Ark., a station on the line of defendant St. Louis, Iron Mountain & Southern Railway Company.

Complainant alleges that defendants' rates on cypress and hard-wood lumber from Gleason, Ark., to all points named in Missouri Pacific System tariff No. 1403, Southwestern lines No. 50, I. C. C. No. 587, and in Missouri Pacific System tariff No. 4929, I. C. C. No. 5504, are unjust and unreasonable and unduly discriminatory, and that defendants' adjustment of rates on the same commodities, from territory in northeastern Arkansas, which is hereinafter more particularly described, when compared with defendants' adjustment of rates from Gleason, Ark., to the same destinations, creates unjust discrimination against complainant and its traffic in cypress and hard-wood lumber from Gleason, and gives undue preference to the points in northeastern Arkansas.

While the allegations of the complaint put in issue the rates on cypress and hard-wood lumber from Gleason to all points of destination named in the tariffs hereinbefore specified, complainant's real grievance, as disclosed at the hearing, is against certain advances made by defendants in their rates on cypress lumber from Gleason

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to Kansas City, Mo., and other Missouri River crossings, and points in the same territory; and also against certain advances made by defendants in their rates on both cypress and hard-wood lumber from Gleason to certain Mississippi and Ohio River crossings, taking St. Louis, Mo., and Cairo and Thebes, Ill., as representative. Complainant does not in fact complain of or assail defendants' rates on hard-wood lumber from Gleason to western points, taking Kansas City as representative.

Gleason, Ark., is north of the Arkansas River, and approximately 85 miles northwest of Little Rock, Ark., on that portion of the line of the St. Louis, Iron Mountain & Southern running from Argenta, Ark., to Coffeyville, Kans. It is the only point on that division of said defendants' line that produces cypress lumber in commercial quantities.

Complainant established its mills at Gleason in December, 1904. For some years prior to 1903 defendants' rate on cypress lumber from Gleason and other points similarly situated to Kansas City, Mo., was 15 cents per 100 pounds in carloads, minimum weight 30,000 pounds. A short time prior to the establishment of complainant's mills at Gleason this rate was raised to 16 cents per 100 pounds, and a similar increase was made to all other Missouri River crossings and to other points of destination in the same general territory. The advanced rates last referred to were in effect at the time complainant commenced to operate its mills, and were maintained without change until May 3, 1909, when the carriers made a general advance of practically 4 cents per 100 pounds on cypress lumber, from Gleason to the various Missouri River crossings and points west thereof. These advances raised the rates to Kansas City from 16 cents to 20 cents per 100 pounds; to Leavenworth and Atchison, Kans., and St. Joseph, Mo., from 17 cents to 21 cents per 100 pounds; to Omaha and Council Bluffs, Iowa, and intermediate points, from 19 cents to 23½ cents per 100 pounds; to Lincoln, Nebr., from 21 cents to 23½ cents per 100 pounds; to points between Coffeyville, Kans., Fort Scott, Kans., Joplin, Mo., and Kansas City, Mo., from 16 cents to 20 cents per 100 pounds. The rate to Wichita, Kans., was lowered from 25 cents to 24½ cents per 100 pounds, and to Topeka, Kans., the rate was increased from 21 cents to 24½ cents per 100 pounds. The cypress lumber rates to points between St. Louis and Kansas City, Mo., were not raised. No changes were made in the hard-wood lumber rates from Gleason to any of the points west thereof.

Prior to the advances complained of, the rates on cypress lumber from Gleason to the west and northwest were the same as the rates on hard-wood lumber; and generally speaking, prior to said advance cypress lumber was, for the purposes of rate making, grouped with

the hard woods at all points north of the Arkansas River. It is claimed by defendants that the advance in the cypress lumber rate was caused by taking cypress out of the hard-wood group and placing it in the group with yellow pine, but the evidence and the tariffs show that when cypress was taken from the hard-wood group and placed in the group with yellow pine, the rates on cypress, yellow pine, and hard woods from Gleason to the western points above referred to were all the same. Therefore the increases in the cypress rates were caused by first grouping cypress with yellow pine and then raising the yellow-pine rates.

When defendants advanced their rates on yellow pine, they established five groups of rates, numbered from 1 to 5, inclusive. Taking Kansas City as an illustrative destination, the rate on yellow pine from all Group 1 points was made 17 cents; from Group 2 points, 18 cents; from Group 3 points, 20 cents; from Group 4 points, 22 cents; and from Group 5 points, 24 cents per 100 pounds, and the same rates applied on cypress.

Generally speaking, Group 5 points include all the territory south of the Arkansas River and the line of the Choctaw, Oklahoma, and Gulf, from Argenta, Ark., to Forest City, Ark., and between the Red and Mississippi rivers. Group 4 points include a small territory running north from Argenta as far as Austin, Ark., and from Argenta as far east as Forest City, and north from Forest City to Wynne, Ark. Group 3 points include a triangular territory, running from Diaz, Ark., on the St. Louis, Iron Mountain & Southern, southwesterly toward Beebe, Ark., thence along the north line of Group 4 to Wynne, and thence northwesterly to Diaz. Group 2 rates apply from the territory north of Diaz as far as Neeleyville, Mo., thence from Neeleyville to Memphis, Tenn., and from Memphis to Wynne. A few points south of and including Forest City, Ark., take Group 3 rates. All points on the St. Louis, Iron Mountain & Southern, from Cadet, Mo., south as far as Neeleyville and east to the Mississippi River, take Group 1 rates. All points on the St. Louis, Iron Mountain & Southern, from Diaz as far as Melva, Mo., on the branch of the St. Louis, Iron Mountain & Southern, running from Diaz to Carthage, Mo., and all points on the St. Louis, Iron Mountain & Southern, from Ozark, Mo., to Coffeyville, Kans., on the line running from Argenta, Ark., to Coffeyville, also take Group 1 rates. All stations on the branch last mentioned, from Russellville, Ark., west to Altus, Ark., take Group 2 rates, and all points on the same branch, from Coal Creek, Ark., to Russellville, Ark., including Gleason, take Group 3 rates.

As before observed, Group 2 rates, on the line of the St. Louis, Iron Mountain & Southern running from Argenta, Ark., to Coffeyville,

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Kans., apply approximately from Russellville, a point about 40 miles west of Gleason. Group 2 rates apply from Russellville as far west as Altus or Ozark, a distance of approximately 40 miles; but with the exception of Gleason, there is no point on that portion of the line of the St. Louis, Iron Mountain & Southern that produces cypress lumber in commercial quantities. The application of the Group 2 rates from Russellville, was apparently the result of arbitrary action, as defendants do not contend that any reasons existed for establishing the Group 2 rate from that point except that in fixing the lines of the group some point had to be taken. Group 2 rates apply from the territory hereinbefore mentioned, northwest of Memphis as far as Neeleyville, and southwest from Neeleyville as far as Diaz, and the distance from the points in that group, whether carried through St. Louis to Kansas City, or through Diaz and Carthage to Kansas City, are as great if not greater than from Gleason, from which point defendants apply the Group 3 rate.

Under all the facts and circumstances of the record, we find that defendants' rates on cypress lumber from Gleason to Kansas City, and other Missouri River points and points west thereof, should not be higher than the rates now applied by defendants from Group 2 points to Kansas City, or 18 cents per 100 pounds, in carloads, minimum weight 30,000 pounds; that the rates from Gleason to the other Missouri River points and points west thereof should not be more than their present differential above the rate from Gleason to Kansas City herein found to be reasonable, and that the rates to such other Missouri River crossings and points west thereof are unjust and unreasonable, to the extent that they exceed the rate of 18 cents per 100 pounds to Kansas City, by more than their present differential above the Kansas City rate. This will result in establishing the following rates from Gleason to the points named: To Kansas City, 18 cents per 100 pounds; to Leavenworth and Atchison, Kans., and St. Joseph, Mo., 19 cents per 100 pounds; to Omaha and Lincoln, Nebr., and Council Bluffs, Iowa, 21½ cents per 100 pounds, and to all points between Coffeyville, Kans., Joplin, Mo., Fort Scott, Kans., and Kansas City, Mo., 18 cents per 100 pounds.

The points above named are taken as representative of the destinations named in the tariffs specified in the complaint, and it is expected that the defendants will adjust their rates from Gleason to the other points named in such tariffs in harmony with this report, and until such adjustment is made this feature of the case will be held open for further action by the Commission if that shall be necessary.

Prior to March 1, 1907, defendants' rates on cypress and hard-wood lumber from Gleason to St. Louis, Mo., and Cairo, Ill., had been 18 and 11 cents per 100 pounds, respectively, but on the date last mentioned

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tioned the St. Louis rates were raised to 15 cents and the Cairo rates to 13 cents, and the Cairo rates at that time were made applicable to Thebes. This two-cent advance was general throughout that territory, and also applied to northeastern Arkansas, which includes all the territory north of the Arkansas River and on and east of the line of the St. Louis, Iron Mountain & Southern. It will be observed that at that time the rates on cypress and hard-wood lumber from Gleason to the points mentioned were the same and the same rates also applied on yellow pine. On December 12, 1908, the rate on cypress from Gleason to St. Louis was raised to 18 cents and the rate on hard wood to 16½ cents per 100 pounds; and to Cairo the cypress rate was raised from 11 to 16 cents and the hard-wood rate from 11 to 14½ cents per 100 pounds. The rates last named were likewise made applicable from Gleason to Thebes. On June 15, 1909, a few days subsequent to the filing of the complaint in this case, the defendants reduced the Gleason-St. Louis hard-wood rate to 15 cents per 100 pounds and the Gleason to Cairo and Thebes rate from 14½ to 13 cents per 100 pounds, and those rates are now in effect in Missouri Pacific tariff, I. C. C. A-1472.

At the time the defendants made the advance in the rates on cypress and hard woods from Gleason to St. Louis, Cairo, and Thebes effective, December 12, 1908, they also advanced their rates on hard wood from points in northeastern Arkansas along the line of the St. Louis, Iron Mountain & Southern from Argenta, Ark., north to Neeleyville, which is approximately on the state line between the states of Arkansas and Missouri. They also advanced the rates on hard wood from stations on the line of the St. Louis, Iron Mountain & Southern running west from Diaz, Ark., as far as Melva, which is approximately on the state line between Arkansas and Missouri. The advances also applied to points east of the line of the St. Louis, Iron Mountain & Southern running from Argenta to Neeleyville and up to the Mississippi River; and when defendants reduced the hard-wood rates from Gleason to St. Louis, Cairo, and Thebes, on June 15, 1909, they made similar reductions in hard-wood rates to points in the territory in northeastern Arkansas, hereinbefore referred to. This reduction practically put the rates from all hard-wood producing points north of the Arkansas River to St. Louis, Cairo, and Thebes on the same basis that existed March 1, 1907. However, in reducing the hard-wood rates from Gleason to St. Louis, Cairo, and Thebes the defendants made no reduction in the cypress rates from Gleason to the same points.

In establishing the rates on cypress and yellow pine to Missouri River crossings and other western destinations from the group points hereinbefore referred to, the defendants have a fixed differential above the rates on hard wood to the same destinations; but in establishing

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the rates on hard woods, cypress, and yellow pine to St. Louis, Cairo, and Thebes from points north of the Arkansas River, the defendants have established the same rate on the different classes of the forest products named, except from stations on the line of the St. Louis, Iron Mountain & Southern running west from Argenta to Coffeyville, Kans., including Gleason. In other words, from all points northeast of Gleason the rates on cypress, yellow pine, and the hard woods to St. Louis, Cairo, and Thebes are the same.

Defendants admit that, while they have established a fixed differential on yellow pine and cypress over hard woods from various producing points to the Missouri River, in adjusting their rates to the Mississippi River crossings they have not attempted to carry out any such relationship. They also say that wherever the rates on yellow pine, cypress, and the hard woods from points in northeastern Arkansas are the same it results from coincidence and not from any fixed plan. However, Gleason and the points located on the line of the St. Louis, Iron Mountain & Southern running from Argenta to Coffeyville are the only points that are excepted from the general adjustment in northeastern Arkansas under which the rates on yellow pine, cypress, and the hard woods are the same.

After a full consideration of all the facts and circumstances we find that defendants' rates on cypress from Gleason to St. Louis are unjust and unreasonable, to the extent that they exceed 15 cents per 100 pounds; and that the rates on cypress from Gleason to Cairo and Thebes are unjust and unreasonable to the extent that they exceed 13 cents per 100 pounds. We can not find, on the present record, that the rates on hard woods from Gleason to St. Louis, Cairo, and Thebes are unjust and unreasonable, as the present adjustment of the hard-wood rates from Gleason to those points is practically the same as it was after the general advance in 1907 and not out of line with the adjustment at other points in the general producing territory of which Gleason is a part.

An order will be entered in accordance with the views expressed herein.

No. 2106.
JOSEPH ULLMAN
v.
AMERICAN EXPRESS COMPANY ET AL

Submitted March 30, 1909. Decided June 15, 1910.

Original complaint herein alleged unreasonable rates, but did not ask for reparation. The Commission ordered reduction of rates, and subsequently complainant instituted this proceeding for reparation; *Held*, That under Rule 206 of Conference Rulings Bulletin No. 4 complaint should be dismissed.

Isaac Weil for complainant.

O'Brien, Boardman, Platt & Littleton for United States Express Company.

T. B. Harrison, jr., for American Express Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

By complaint filed December 6, 1907, and amended May 26, 1908, complainant alleged that defendants' rates for the transportation of raw furs from St. Paul to New York were unreasonable, and that defendants unlawfully applied to this commodity a lower rate when consigned to themselves at New York for shipment abroad than when sent to any other consignee for that purpose. No reparation was asked. By order of June 25, 1908, defendants were required to reduce their domestic rate on raw furs, St. Paul to New York, from \$4.50 to \$3.50 per 100 pounds, and to extend to complainant and other shippers of raw furs for export their inland export rate (14 I. C. C. Rep., 340).

By a new complaint, filed February 5, 1909, complainant instituted the present proceeding, in which reparation is sought in the sum of \$188.83, upon shipments of furs from St. Paul to New York prior to the effective date of the Commission's order in the original proceeding, the amount involved representing the difference between said rates of \$4.50 and \$3.50 as applied to complainant's shipments. It thus appears that complainant instituted one proceeding in which he sought relief for the future; and, having been successful therein, has instituted a second proceeding in which he seeks reparation on amount of past shipments upon the basis established by the Com-

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mission for the future. Defendants contend that if complainant desired an award of reparation he should have given notice to that effect in his original complaint, and having failed to do so should now be estopped from claiming damages upon shipments which moved prior to the filing of such complaint.

With this contention we are inclined to agree. As has been heretofore suggested, the Commission is not disposed to try complaints by piecemeal. If a complainant desires to secure reparation upon traffic in respect of which he also seeks reduction of the rate for the future, we think he may reasonably be required to present his whole case at once. The Commission enforces in its investigations only the most elementary rules of procedure, requiring merely that the complaint shall set forth concisely an alleged violation of the act. It is aimed to avoid technical rules which might impede the way to substantial justice, and to determine each case upon the merits alone. Obviously, however, it is in the interest of good administration that an entire case should be presented to the Commission and to the defendants.

Cases are ordinarily assigned for hearing at some point convenient to the complainant; but each hearing involves attendance by a member of the Commission or an examiner, and of the defendants' counsel and witnesses, at the place assigned. If, after an order for the future is secured, complainant may institute another proceeding for reparation on past shipments, a second hearing becomes necessary which may involve an expenditure of public funds and a hardship upon defendants quite out of proportion to the amount sought to be recovered. Moreover, it does not follow, because the Commission has found a rate unreasonable and established a lower rate for the future, that the former rate was unreasonable at all times in the past; and therefore, in such a proceeding as this, a second and independent investigation would be unavoidable. These are among the practical considerations which impel us to condemn the trial of cases by piecemeal and to uphold the general principle that, so far as may be practicable, the defendant carrier should be apprised in one proceeding of the entire relief sought in respect of the subject-matter of the complaint.

Reparation will not ordinarily be awarded in a formal case attacking a rate as unreasonable unless intent to demand reparation is specifically disclosed in the complaint or in an amendment thereto filed before the submission of the case. The Commission will of course reserve the right to deal as may be deemed proper with a claim for reparation disclosing unusual circumstances, where application of the general rule might be unjust or inequitable (Conference Rulings Bulletin No. 4, Rule 206). The present complaint will accordingly be dismissed.

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No. 1063.
HILLSDALE COAL & COKE COMPANY
v.
PENNSYLVANIA RAILROAD COMPANY.

Submitted January 25, 1909. Decided March 7, 1910.

1. To the physical capacity of a coal mine the defendant adds its commercial capacity tested by the shipments made from it during the preceding 12 months, and divides the sum by two; these two factors being revised quarterly the mine is thus given a constantly corrected rating in the distribution of coal cars during percentage periods. If this basis is equitably applied to all mines served by the defendant the Commission is unable to see that it results in an unequal, unfair, or discriminatory distribution of its equipment.
2. The complainant's contention that physical capacity alone is the fair and sound basis for rating coal mines for car distribution is not sustained; the utmost obligation of a carrier under the law is to equip itself with sufficient cars to meet the requirements of a mine for actual shipment; and it is of no real concern to the carrier what are the physical possibilities of a mine in the way of daily output except as that factor may afford some measure of what its actual shipments will be.
3. The Commission reaffirms its previous ruling to the effect that the owner of private cars is entitled to their exclusive use and that foreign railway fuel cars assigned to a particular mine can not be delivered to another mine; but it again holds that all such cars must be counted against the distributive share of the mine receiving them. It is therefore *Held*, That the defendant's rule, providing that the capacity in tons of such "assigned" cars shall be deducted from the rated capacity of the mine receiving them and that the remainder is to be regarded as the rated capacity of the mine in the distribution of all "unassigned" cars, is unlawful and discriminatory.
4. The defendant's contention that, so long as the petitioner receives all the coal cars it is entitled to, it has no right to complain because some other operator receives an undue proportion of cars is not sustained. The law not only gives the shipper a right to an equal or a justly ratable use of the facilities of an interstate carrier but the assurance also that no other shipper shall fare ratable better at the hands of the carrier.
5. The question of damages, which the complainant claims to have suffered as the result of the discriminations herein found to have been practiced against it, reserved for further argument.

David L. Krebs and Harry White for complainant.
Francis I. Gowen, George V. Massey, and Murray & O'Loughlin
for Pennsylvania Railroad Company.

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REPORT OF THE COMMISSION.

HARLAN, *Commissioner*:

In this group of cases, of which the above-entitled complaint has been selected as the one in which the views of the Commission may best be expressed, the petitioners bring to our attention the method or rules in effect on the lines of the defendant, during the period mentioned in the complaints, for the distribution of coal cars among the coal mines which the defendant serves. In each case the petitioner demands an order by the Commission requiring the defendant so to change or modify its rules that the distribution of its coal-car equipment may be made on what they regard as a more equitable and just basis. Damages in large amounts are also asked in order that the several complainants may be compensated for losses which they claim to have suffered by reason of the alleged failure of the defendant during the period of the action to give them the number of cars that they were justly entitled to receive.

The consideration of these complaints has been deferred because, when they were submitted for decision, there were pending in the lower courts and before the Supreme Court of the United States cases involving not only the question of the soundness and legality of the rulings heretofore made by the Commission respecting the distribution of coal cars by interstate carriers, but involving also the power and authority of the Commission to control and enter orders in respect to the practices of interstate carriers in such matters. Under the circumstances it seemed wise to await the final disposition of those cases in the court of last resort before making any further announcement of our views with respect to the matter of coal-car distribution; and this course seemed particularly desirable in view of the fact that the defendant in this proceeding, although not a party to any of the appeals in the Supreme Court of the United States, had been permitted, upon its special request and because of its interest in the questions involved, to participate in the argument and presentation of the cases before that court.

The general status of the question before the Commission may be readily ascertained by an examination of our decisions in one or two formal proceedings since the passage of the so-called Hepburn Act. In *Railroad Commission of Ohio v. H. V. Ry. Co.*, 12 I. C. C. Rep., 398, we held that while a carrier during periods of car shortage might not assign privately owned cars to operators other than their owners, and might not assign foreign railway fuel cars to any mines except those to which they had been manifested by the foreign lines, it must nevertheless count all such cars against the distributive share of the respective mines to which the private cars belonged or to which the foreign railway fuel cars had been consigned; and in case the private

cars or foreign railway fuel cars so delivered to a mine were not sufficient to fill out its distributive share of available coal cars, it should have in addition only so many of the system cars of the carrier as might be necessary, when added to the private or foreign railway fuel cars so received by it, to make up its full ratable proportion of the total available coal cars of all classes. We also held that all foreign railway fuel cars consigned to a particular operator, and all private cars owned by a particular operator, must be delivered to that operator, even though their number might exceed the ratable proportion of the particular mine in the distribution of available cars.

The order then entered to give effect to these conclusions was accepted by the defendant in that proceeding. But when the same general principle was applied by the Commission in *Traer v. C. & A. R. R. Co.*, 13 I. C. C. Rep., 451, to the distribution of company fuel cars the defendant in the latter proceeding declined to accept our order either as one within the power of the Commission to enter or as a just and proper disposition of the contention made upon the record. In the same report we disposed of similar complaints by the same petitioner against the Illinois Central Railroad Company and the Chicago, Peoria & St. Louis Railway Company. These companies also declined to obey our order. The result was proceedings in the United States circuit court for the northern district of Illinois, the Illinois Central and the Chicago & Alton being the moving parties, in which that court held that the complainant carriers were not entitled to relief from that part of the orders of the Commission that required private and foreign railway fuel cars to be taken into account against the distributive share of the coal companies receiving them, but were entitled to an injunction restraining the enforcement of the orders of the Commission in so far as they related to the cars employed by the complaining carriers in hauling their own fuel coal. From this decree an appeal to the Supreme Court of the United States was prosecuted by the Commission and the whole question was considered by that tribunal in *Interstate Commerce Commission v. I. O. R. R. Co.*, 215 U. S. 452, and *Interstate Commerce Commission v. O. & A. R. R. Co.*, 215 U. S. 479, in which decisions have lately been announced.

The court there held, as the Commission had previously held in *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. Rep., 86, that the basis adopted by an interstate carrier for the distribution of coal cars among coal operators upon its lines was a regulation or practice "affecting rates" as that phrase is used in section 15 of the amended act to regulate commerce, and as such was a matter within the regulative power of the Commission. It was also held that the fuel cars of an interstate carrier, in which it hauls fuel for its own use, are

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instruments of interstate commerce as fully as are its system cars in which commercial coal is hauled for shippers; and consequently "that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equitable distribution and the prevention of an unjust and discriminatory one." Drawing attention to the distinction that must necessarily be observed by the courts between the power to regulate and the unwise exercise of the power in a given case, that court disclaimed for itself, and also denied to any other federal court, the right to usurp the purely administrative functions of the Commission by substituting a regulation that the court might deem wise for one which it considered the Commission in the exercise of its conceded power had inexpediently adopted. The decree of the lower court enjoining the enforcement of the order of the Commission, in so far as it related to the distribution of company fuel cars, was therefore reversed.

It thus appears that the orders of the Commission with respect to the distribution of coal cars by interstate carriers, as expressed in the several cases referred to, remain unaffected by the attacks that have been made upon them in the courts. And our further consideration of these questions in connection with this group of cases has confirmed our conviction that the general principles underlying the disposition made of the previous cases are both sound and just. We shall therefore proceed to ascertain what has been and is now the practice of the defendant in respect to the distribution among coal operators of its available coal-car equipment, and how far it differs, if at all, from what the Commission has regarded and, in the cases referred to, has announced as the just and equitable basis of distribution. It may be well, however, first to say a word in respect to the method or basis in effect on the lines of the defendant for assigning to each of the coal mines that it serves a daily output rating for determining its proportion in the distribution of coal cars, that being one of the practices of the defendant of which complaint is made by the petitioner herein, as well as by the petitioners in the other cases in this group.

In *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. Rep., 86, it appeared that the method of rating mines adopted by that carrier involves two principal factors, (a) the physical capacity of the mine, and (b) its commercial capacity. The physical capacity is ascertained in the manner explained in our report of that case (*id.*, p. 93) and the method need not therefore again be described. It will suffice to say that it is substantially the plan now generally followed by coal-carrying roads. The commercial capacity, or the requirement of a mine for cars as tested by its actual shipments, is arrived at by taking the volume of the shipments made by a mine during a period of free-car supply, usually of four months and generally from April 1 to August 1, in each of the two preceding years. The three figures, expressed

in coal tons, namely, the physical capacity, the commercial capacity for the first year, and the commercial capacity for the second year, are added together and the sum is divided by three. The result is the capacity basis that is established by the Baltimore & Ohio for determining the percentage of the available coal equipment that the particular mine is entitled to receive during any period of car shortage. After a careful consideration of the system as applied to interstate shipments, we were inclined to think and so intimated (*id.*, p. 96), that a method of rating coal mines based upon a combination of their physical and commercial capacities more closely approximates their actual car requirements than a system based upon physical capacity only.

But in this petition the complainant, as we understand its attitude, demands that the commercial capacity of the mines served by the defendant shall be eliminated as a factor in fixing their rating and that their physical capacity shall be accepted as the sole factor for determining their respective proportions in the distribution of coal cars. The defendant, while combining the physical with the commercial capacity, does so in a way that differs somewhat from the plan in effect on the Baltimore & Ohio. To the physical capacity of a mine it adds its commercial capacity for one year only and divides the sum by two. The commercial capacity, however, is not based upon shipments made from a mine during a substantial period of free-car supply, as is the case on the Baltimore & Ohio, but upon the entire volume of shipments made from the mine throughout the preceding twelve months. The ratings are revised quarterly on February 1, May 1, August 1, and November 1; the rating of any particular operation will also be revised by the defendant upon request regardless of the quarterly tests. In other words, the commercial capacity of each mine is brought up to date at each quarterly rating period by taking into consideration its new tonnage for three months and adding to it the tonnage of the preceding nine months previously used in the preceding rating. In this manner the defendant endeavors to follow up as closely as possible the fluctuations in the market, labor conditions, and car supply. By combining the commercial capacity of a mine, thus ascertained and constantly brought up to date, with its physical capacity, the rating of the mine in the distribution of coal-car equipment is determined. And if this system of rating is equitably applied to all mines served by the defendant we are unable, so far as our investigations to the present time have informed us on the question, clearly to see upon what grounds it may be said to result in an unequal, unfair, or discriminatory distribution of its equipment.

But, as heretofore stated, the complainant insists that the physical capacity of a mine is the sole and only proper basis for determining its rating for purposes of car distribution. The economic waste involved in a system that leads operators to develop their mines beyond their commercial requirements and for the sole purpose of increasing their percentage of coal-car supply was discussed in *Rail & River Coal Co. v. B. & O. R. R. Co.*, *supra*. While an order of the Commission in a particular case must necessarily fix the rights of the parties to the proceeding, so far as past shipments are concerned, and must necessarily restrain, until our further order, the continuance of the rate or practice that we condemn, and compel the carrier to observe the rate or practice that we prescribe for the future, these great questions of transportation are not foreclosed of further discussion and consideration upon further complaint. Additional experience with the actual operation of rules that combine commercial with physical capacity in the rating of coal mines for car distribution, may throw new light upon a matter that has vexed the Commission as well as many carriers that have endeavored to do equity as between different mines on their lines; and if so, we shall not hesitate to modify what has been said here and in other cases before us on that question. The principle of *stare decisis* has little application in proceedings before us involving questions of this nature. But at this time and upon the present state of our information and experience in the matter we can not accept the complainant's contention that physical capacity alone is the fair and sound basis for rating mines for car distribution. Speaking in precise terms, it is of no real concern to a carrier how large a particular mine may be and what are its possibilities in the way of daily output, except as those factors may afford some measure of what its actual shipments will be. The utmost obligation that the law lays upon the carrier is to equip itself with sufficient cars, not to meet the hopes and expectations of the owner of a mine as expressed in its physical development, but to meet his actual shipments. A mine rating that is adjusted to the expectations of the operator and altogether ignores his actual requirements might easily result, in a period of car shortage, in giving him cars for every ton of coal that he can actually dispose of, while an adjoining mine, with a small development but a larger demand for its output, would get but a fraction of the equipment that it needs to meet its actual contracts.

In *Powhatan Coal & Coke Co. v. N. & W. Ry. Co.*, 13 I. C. C. Rep., 69, the record showed that thousands of dollars had been expended in the erection of additional ovens, not for actual use or to meet any commercial demand for more coke, but solely for the purpose of securing additional cars in the distribution by the carrier

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of its equipment during car shortage periods; and we there condemned a rule for the distribution of coke cars that ignored actual shipments and was based solely on the number of coke ovens that had been erected by the different coke companies. Nothing has since developed, or was suggested in this proceeding, to change our view on the general question, and the complainant's contention that physical capacity is the fair and reasonable basis for rating mines for car distribution must therefore be dismissed as untenable.

We come now to the practice of the defendant in the past and at the present time in the distribution of its available coal-car equipment.

Under a rule announced by it on February 1, 1903, the defendant seems to have charged all railroad cars, regardless of ownership, and private cars not owned by the operator loading them, against the distributive share of each mine, but it treated its own fuel cars as a special allotment in addition to the distributive share. On March 28, 1905, a notice was sent to shippers of bituminous coal from mines on the lines of the defendant advising them that thereafter all railroad cars, regardless of ownership, and all private cars not owned by the operator loading them, should be considered as cars available for distribution, except its own company fuel cars and fuel cars sent upon its lines by foreign companies and specially consigned to particular mines.

On January 1, 1906, the defendant divided all cars into two classes which it designated as "assigned" and "unassigned" cars. In the former class were its own fuel cars, foreign railway fuel cars, and individual or private cars loaded by their owners or assigned by their owners to particular mines. The rule then made effective and still in force provides that the capacity in tons of any "assigned" cars shall be deducted from the rated capacity in tons of the particular mine receiving such cars, and that the remainder is to be regarded as the rated capacity of the mine in the distribution of all "unassigned" or system cars. This order or rule of the defendant was the occasion of some comment in *Logan Coal Co. v. P. R. R. Co.*, 154 Fed. Rep., 497, 498, where the court says:

To illustrate the effect of the order on an individual number of cars as compared with a competitor receiving only company cars, take two operators each having mines rated at 500 tons a day, and assume that on any given day the company has enough of its own cars on hand to deliver to all mines cars which would take care of 70 per cent of the output. Assume that one operator has individual cars available on that day for the shipment of 200 tons, while the other has no individual cars at all. The latter receives railway company cars capable of carrying 70 per cent of 500 tons, or 350 tons. The former, on the day in question, will receive individual cars in which he can ship 200 tons, and his rating for a distribution of the company's cars for that day will be reduced to 300 tons, 70 per cent of which is 210 tons, for the transportation of which he will receive company cars, so that the operator with the individual cars will be able to ship on the day instanced 410 tons, as against the shipment of 350 tons

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by the operator who has no individual cars. To this extent the relator has the advantage over its competitors who do not own individual cars, and it receives the exclusive use of its cars at all times.

The results arrived at by the court in its illustration seem to us not quite accurate, in that the total car capacity of 700 tons assumed by the court is made up of the company's system cars, and excludes from consideration the fact that one of the mines had on hand individual cars having a capacity of 200 tons, making a total available car capacity of 900 tons. Worked out on the basis of that total car tonnage the owner of the private cars would receive equipment enough to enable him to ship 463 tons and not 410 tons as stated by the court, while the mine depending upon system cars only would be able to ship 437 tons instead of 350 tons as stated by the court. The court used a car capacity of 70 per cent as the total available equipment for the output of both mines instead of a car capacity of 900 tons, or 90 per cent, which was actually on hand in the case assumed. In other words, the court absorbs in its illustration only 760 tons of the output of the two mines, while the facts assumed show that car capacity of 900 tons was available. Under the Commission's rule each mine under these circumstances would have been able to ship 450 tons.

Using the same two mines with an assumed capacity of 500 tons each a day and available equipment with a total capacity of 70 per cent or 700 tons, including the individual cars with a capacity of 200 tons owned by one of the mines, the rule of distribution which this Commission has approved in *Railroad Commission of Ohio v. Hocking Valley Ry. Co.* and *Traer v. C. & A. R. R. Co.*, *supra*, would result in giving the latter mine its individual cars of 200 tons capacity and system cars enough to absorb 150 additional tons, or a total of 350 tons, being one-half of the available equipment tonnage. The mine not owning the individual cars would get the other half of the available equipment tonnage, but all of it in system cars. Under the defendant's rule, on the other hand, the mine owning the individual cars would receive them and would thereby be able to ship 200 tons of its total output capacity of 500 tons a day. The rating of this mine would then be reduced to 300 tons a day as against the rating of 500 tons assigned to the mine owning no private cars, the total reduced rating for the two mines being 800 tons. Instead of 700 tons the equipment remaining available for distribution would carry but 500 tons, of which the mine owning individual cars would get three-eighths, or 188 tons, making its total tonnage 388 tons, while the other mine would get five-eighths, or system cars of a capacity of 312 tons, an advantage of 76 tons enjoyed by the mine owning private cars in the distribution of all available equipment.

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That mine under the defendant's rule would therefore be able to ship out between 20 and 25 per cent more coal than its competitor, while under the rule approved by the Commission the shipments of the two mines would be the same under the facts assumed by the court in the case cited.

Referring to system fuel cars and foreign railway fuel cars assigned to a particular mine, the court in *Logan Coal Co. v. P. R. R. Co.*, *supra*, said, p. 503:

The general trend of the decisions is to the effect that all cars, whether individual cars or owned by the railroad company, or assigned by other railroad companies for fuel, shall be treated as an available car equipment as a whole, distributable pro rata to shippers desiring their use along the line, upon a basis giving each equal facilities with the other. Following are some of the cases in which these questions have been considered: *United States ex rel. Coffman v. N. & W. Ry. Co.* (C. C.), 109 Fed. Rep., 831; *United States ex rel. Kingwood Coal Co. v. W. Va. & N. R. R. Co. et al.* (C. C.), 125 Fed., 252; *W. Va. & N. R. R. Co. et al. v. United States ex rel. Kingwood Coal Co.*, 134 Fed., 198, 67 C. C. A., 220; *United States ex rel. Greenbrier Coal & Coke Co. v. N. & W. Ry. Co.*, 143 Fed., 206, 74 C. C. A., 404; *State ex rel. v. C., N. O. & T. P. Ry. Co.*, 47 Ohio St., 130, 23 N. E., 928; *United States ex rel. Pitcairn Coal Co. v. B. & O. R. R. Co. et al.*, 154 Fed., 108.

That is the general theory for the distribution of coal-car equipment that has appealed strongly to this Commission as being fair, reasonable, and nondiscriminatory. We recognize the right of a company to contract with a particular operator for its fuel supply; we recognize the right of a connecting line also to do this; and each may send its cars to those mines to the exclusion of other mines. We also insist that the owner of private cars is entitled to their exclusive use. But in each case we hold that all such cars must be counted against the distributive share of the mine receiving them. When subjected in all its different phases to the scrutiny of the Supreme Court of the United States in the cases just decided and announced (*supra*) the position of the Commission in this matter was not found objectionable either on legal or constitutional grounds. And as the exhaustive arguments and our further consideration of the same questions in these proceedings have not given us any new light or led us to any different conclusions, the rulings in the previous cases must control the disposition of the complaints in this group of cases so far as they may be pertinent.

Upon all the facts shown of record the Commission therefore finds that throughout the period of the action the system upon which the defendant distributed its available coal-car equipment, including system fuel cars, foreign railway fuel cars, and individual or private cars, has subjected the complainant to an undue and an unlawful discrimination. In this connection an important disclosure is made in a letter of record here, addressed to the president

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of the Clark Brothers Coal Mining Company under date of March 6, 1907, by the general superintendent of coal transportation of the defendant company. It is there stated that the distribution of coal cars on the lines of the defendant on that date was as follows:

	Per cent.
System cars for company coal.....	21
Foreign cars for supply coal.....	6
Individual cars.....	45
System cars for commercial coal.....	25
Foreign cars for commercial coal.....	3
Total.....	100

This condition of affairs emphasizes the inequity of a system of distribution that first deducts from the rated capacity of a mine the tonnage represented by the capacity of the cars specially assigned to it and then uses the remainder as a new basis for determining the proportion of unassigned cars that the mine is to have. The figures above given show that 72 per cent of all the cars available on the lines of the defendant on the date mentioned were assigned cars, and but 28 per cent were unassigned cars. Manifestly such a basis of distribution can have but one tendency, and that is, not only to steadily increase the physical capacity of the mines that regularly receive this large percentage of assigned cars, but also steadily to increase their commercial capacity, an advantage which the mines having the benefit of no assigned cars obviously can not enjoy. With such a large percentage of assigned cars it can not be doubted that the equipment furnished to some of these mines was sufficient to approximate their ratings, while the small percentage of unassigned cars makes it equally clear that the mines having no other cars must have fallen substantially short of their ratings.

We further find that the continuance of that system of distribution for the future would be unlawful on the same grounds. Although the mine owning private cars or to which company or foreign railway fuel cars are consigned is entitled to receive them even though in excess of its ratable proportion of all available coal-car equipment, nevertheless the defendant will be required in the future to count all such cars against the distributive share of the mine so receiving them. It is scarcely necessary to add that the complainant's second request for a finding and for an order requiring the defendant, during percentage periods, to distribute ratably among operators, according to the actual output capacity of their mines, "all cars adapted to and used for carrying bituminous coal," whether company fuel cars, foreign railway fuel cars, or private cars, must be denied.

In view of our finding herein that the practice of the defendant in not counting assigned cars against the ratings of the mines has been

discriminatory and has resulted in injury to the complainants in this group of cases, it is suggested that it will not be fair or equitable to content ourselves with the condemnation of that practice and the entry of an order requiring a different practice for the future; such a course, it is said, will leave the complainants under the disadvantage that the practice has wrought in the past, while giving to the favored mines the results that have wrongfully accrued to them. In other words, it is said that, under the rules here condemned, the preferred mines have been able year by year to enlarge their commercial output while the commercial output of the complainants and others has been restricted; and that justice requires that there shall be a new point of departure, at least for the present, based solely upon the respective physical capacities of the mines on the lines of the defendant. Exact justice is ordinarily not attainable. It is difficult no less for this Commission than for a court to deal with such a situation as this with mathematical accuracy. The most that either may hope to accomplish in such a state of facts is to do substantial justice; and this we do, so far as it seems to us possible, when we require the defendant to adjust its rules on a proper basis for the future, and give to the complainants the opportunity to have their injuries redressed in the form of damages. While the tendency of the prior rules must have been to enlarge the commercial capacity of the preferred mines, we can not doubt that their physical capacity has also been enlarged. And we have no assurance that an order requiring the defendant, for the present as suggested, to distribute its cars on the basis solely of physical capacity would not, in some cases at least, work very substantial injustice.

That the practices of the defendant with respect to the rating of mines and the distribution of coal-car equipment were, to some extent at least, in a loose and unsatisfactory condition prior to 1905 not only appears in this record, but in the record of the coal and oil investigation made by the Commission under the joint resolution of the Congress approved on May 7, 1906. There seems at that time to have been a more or less well-defined policy on the part of the defendant to discourage the opening of new coal operations. But just how far this condition of affairs, prior to January 1, 1906, when the new regulations went into effect, may adversely have affected the complainant in a financial sense it is impossible upon this record to say. The increasing price received for coal in the general markets suggests the possibility that the coal not mined at that time may subsequently have been mined and sold to the complainant's advantage. There are one or two other matters, however, of which complaint is made and to which it may be well here to refer.

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The evidence shows that quite frequently, just how often not appearing, cars were placed at the mines of the petitioner too late to be loaded on that day, and one of the complaints made in the petition is that prior to January 1, 1906, the defendant charged such cars against the complainant's allotment not only for the day on which they were so placed but also against its allotment for the following day. It is even said that the complainant's mines were charged with cars placed there during the night. At the time in question, whatever may now be the case, it was the custom of the miners to enter the mines at 8 a. m., and under the rules then in effect, if cars were not on the siding ready for loading at that time but were received later during the day they would not be loaded until the next day. It does not appear just what the defendant's system was prior to January 1, 1906, with respect to the counting of cars placed at the mines for loading and not loaded until the following day. But the distribution sheets after that date contained a rule as follows:

A car placed too late for loading will not be counted as available for loading until the following day. A car available for loading and not loaded will be counted each day in column headed "Empty cars over" until loaded or otherwise disposed of. A car loaded and not consigned will, unless consigned on the unloading day, be counted each day in column headed "Unconsigned loads over" until consigned.

No claim is made upon the record that this rule, which seems still to be in effect, does not give fair results or that there is any discriminatory practice being carried on with respect to this phase of car distribution. So far as concerns the defendant's practice before that date there seems to be no indication of any discrimination in this respect against the complainant in this or in the cases that follow it; nor is there any evidence that other mines were unduly favored in that regard.

It also appears that at an expense of about \$5,000 the complainant had constructed a tipple at its mine No. 2 and also a siding connecting it with what is known as the "Fuller Run tracks," a road about one mile long extending from the defendant's line to mines from which shipments had been made for a number of years, but which at this time seem to have been closed. From its mine No. 2 the complainant was ready to make shipments in April, 1903, but the siding, as it asserts, was spiked down by the defendant and kept in that condition for about nineteen months. Requests were made by the complainant from June 28 to July 31, 1903, for cars enough to ship 100 tons of coal per day from that mine. But no cars were furnished by the defendant until January 17, 1905, and then only after mandamus proceedings had been instituted in the courts. The defendant's failure to supply cars for that mine, while supplying cars to other mines in the district, is one of the discriminations alleged in the complaint. What reason it had

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for refusing or failing to set cars there is not satisfactorily explained of record. But for some reason also not explained the complainant allowed the matter to rest in that condition for many months without taking any steps against the defendant and without even renewing its demand for cars so far as the record discloses. It is not clear, moreover, that the alleged closing of that siding by the defendant can fairly be regarded as a basis for a charge of discrimination; it has more the character of a tort or a wrongful violation of the defendant's general duty to the complainant as a common carrier for which an appropriate action in the courts would doubtless lie to recover any damages thus sustained.

It is also asserted by the complainant that its mines were unfairly rated when compared with the ratings assigned to other mines in the same district and that as a result of this discrimination it suffered substantial losses. Although it appears that the capacity assigned in 1903 to certain of the mines of Williams & Company in the same mining district was greater than that established for the same mines in 1906 after a more accurate system of mine rating had been devised, the proof is not sufficiently clear to permit of a definite finding of a discrimination against the complainant in that respect. It does appear that prior to January 1, 1906, the rating assigned to mines in the nine coal-mining districts on the lines of the Pennsylvania were made, with the approval of the general superintendent, by division superintendents upon the general information of the latter officials, derived from observation and their general knowledge, and not upon any definite principle or plan for rating mines. The ratings, therefore, varied in accordance with the information and ideas of the different superintendents. We do not in fact understand the defendant to claim that there was any real system of mine rating in effect at that time. This lack of system was indeed characteristic of other large coal-carrying lines at that time, as is shown in the report of this Commission to the Senate and House of Representatives in the investigation to which reference has just been made.

The defendant meets this point by asserting that the real question to be determined is whether the complainant received less than its proper share of the cars distributed by the carrier during periods of scarcity of equipment and that it is not material that some other coal operator may have received more than his quota of available cars. In other words, the contention is that so long as the complainant received all the cars it was entitled to it has no right to complain that some other coal shipper, as the result of a high mine rating or otherwise, secured an excessive proportion of the available cars, if this preference was not at the expense of the complainant. We must reject that view. The act to regulate commerce as amended not only

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gives a shipper a right to an equal or a justly ratable use of the facilities of an interstate carrier, but gives him the assurance also that no one else shall fare ratably better than he does at the hands of the carrier. It may be true that a court would not allow the complainant damages for losses due to the defendant's failure to furnish it cars that it was not entitled to receive, but this Commission may surely require an interstate carrier to cease and desist from giving its competitor more cars than the competitor is entitled to receive.

But upon this part of the case the complainant's own witnesses do not sustain it to the full extent of its contentions, and we can only express the general impression that neither in its rating nor in its car supply did the complainant fare as well at the hands of the defendant as it possibly should have done. We find it impossible, however, to arrive at any clear or accurate statement of the extent of the discrimination. Williams & Company, its chief competitor in that district, received many more cars than the complainant and their mines enjoyed a higher capacity rating than was assigned to the mines of the complainant. They sold large quantities of coal to the defendant for use in its locomotives, and these cars were not counted against Williams & Company. While there was doubtless some discrimination in these matters, as there certainly was in the defendant's failure to count its own fuel cars against those mines, it is difficult, if not impossible, to assign definite boundaries to it and to say at this time what should have been the rating of the respective mines and what should have been the proportion of each in the distribution of the defendant's coal-car equipment.

It is suggested that under its corporate charter, granted by the state of Pennsylvania, the defendant is not only a common carrier or transporting agency, but that its rails are at the same time a public highway, and it must therefore haul loaded or empty private cars for their owners upon reasonable terms. There is in its charter some language to that effect; and in *Boyle v. P. & R. Ry. Co.*, 54 Pa. St. Rep., 310, cited by counsel for the defendant on the argument, the supreme court of Pennsylvania held that a similar charter of another company in that state contemplated such a dual use of the road, by the company itself as a carrier in transporting the freight of shippers and by the owners of cars as a public highway substantially in the sense that a canal or turnpike is a public highway. Counsel, therefore, contends that the dual capacity in which the defendant is required to serve the public, as shippers and as car owners, necessarily eliminates from the case the argument that individual cars or private coal cars must be treated as railroad-system cars for purposes of allotment or distribution. It is urged that private cars may properly be counted against the mine owning them only in the manner and to the extent

that the defendant's present rules take them into account in periods of car shortage.

Without entering upon any discussion of the extent to which the terms of a charter granted to a carrier by a state may control or limit the performance of its functions and obligations as an agency of interstate transportation, it will suffice to say that in none of its decisions relating to coal-car distribution has the Commission undertaken to forbid the use of private cars by their owners, even though in a period of car shortage the number of cars owned by a mine may enable it to load daily more than the number of cars that it would receive if dependent solely on its share of system cars. On the contrary, the Commission has not only recognized the right of carriers to move private cars, but has insisted that the owners may not be deprived of the use of their individual cars and that such cars may not be thrown into the general pool of system cars and thus be diverted to the use of other operators. As the Commission has made no ruling that conflicts with the rights and obligations arising under the defendant's charter as construed by the state supreme court, we need not, and do not, here consider what the situation would be if the terms of its state charter required the defendant carrier in the distribution of its coal-car equipment to work an undue discrimination against an interstate shipper in violation of the act to regulate commerce as amended.

The petitioner in this complaint bases its claim for damages on the amount of coal that it might have mined, if the defendant had furnished it with a sufficient supply of cars to enable it to work its mines twenty days a month during the period covered by the complaint. It also claims that the cost of mining the coal actually taken out during the period in question was higher than it would have been had the defendant furnished it with an adequate supply of cars, thus enabling it to operate its mines to the best advantage by running them regularly and to their full capacity. In making up the amount of its claim the petitioner excepts a period of four months during 1906 when its miners were on a strike and takes the average selling price of coal during the remainder of the period covered by the action. It deducts as the cost of mining an amount per ton that is estimated as the probable cost had the defendant furnished the complainant with cars enough to enable it to run its mines at full blast and with the regularity that produces the best results. Upon this general basis the complainant asserts that it has been damaged as the result of the alleged discriminations against it by the defendant in the sum of \$127,855.65, and for this amount it asks an award at the hands of the Commission.

The complaint herein was filed before our decision in *Joynes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, was announced. In that proceeding damages were demanded for losses alleged to have been suffered in the decay of the complainant's fruit by reason of an alleged discrimination against him in favor of other dealers in fruit to whom the defendant, as the complainant contended, had given a preferred use of its unloading platform, thus delaying his shipments until the fruit was spoiled. We held, upon grounds that are there fully stated and need not be repeated here, that while the Commission was competent to find that a discrimination had been practiced, the measurement or ascertainment of the damages the complainant had suffered in consequence thereof was a judicial question for the courts and not for the Commission; the view expressed was that the only damages that may be assessed by the Commission under the amended act were rate damages or damages that could be measured by the difference in the rate actually charged and the rate which, for any reason under the act, ought lawfully to have been charged; and that the complainant's remedy for the damages in compensation of the loss suffered in the value of his fruit was in the courts.

That case differs from this in that it involved a single wrong in the nature of a tort against a particular shipper, while this case in its larger aspect involves the validity of a rule for car distribution applicable alike to all coal shippers on the line of the defendant and resulting, as we have pointed out, to the benefit of some shippers and to the injury of others. We have found that in the particulars herein explained, discrimination was practiced, and have held that for such damages as resulted the complainant is entitled to recover from the defendant. As to whether we may go beyond the transportation question, the alleged discriminatory rules and practices, and enter upon an inquiry as to the amount of the damage that may have been suffered by the complainant, the Commission is divided as in the case to which we have just alluded. The majority is still of the opinion that it is not for us under the law to assess and determine the measure of the damages thus sustained by the complainant, that being a judicial question for the courts. At the most any finding by the Commission as to the amount of damages would be the expression of an opinion that could not be enforced by the Commission and would have no conclusive and binding effect upon the court to which, in any event, resort must be had by the complainant for a finding and judgment in the usual manner required by fundamental law. The minority, conceding some of the difficulties to be encountered in dealing with such matters, nevertheless interpret the law as necessarily casting that burden upon the Commission.

Since our decision in *Joynes v. P. R. R.*, *supra*, was announced, our attention has been called to an opinion by Judge McPherson of 19 I. C. C. Rep.

the United States district court, sitting in the circuit court of the United States for the eastern district of Pennsylvania, in *Morrisdale Coal Co. v. P. R. R. Co.*, 176 Fed. Rep., 748 (advance sheets of May 12, 1910). That was an action by the coal company against the defendant herein to recover damages in the sum of \$250,000 for the sales and contracts that are alleged to have been lost because of the discrimination resulting from the same coal-car distribution rules that are involved in the proceeding now before us. Citing *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426; *Baltimore & Ohio R. R. Co. v. U. S.*, 30 Sup. Ct., 164; and *Interstate Commerce Commission v. I. C. R. R. Co.*, 173 Fed. Rep., 930, Judge McPherson holds that the Commission and not the courts has primary jurisdiction to award reparation for the general damages of that character that may have resulted from a preferential practice in the distribution of coal cars during a percentage period. The case brings a new element into the situation. That is the court whose jurisdiction this complainant would doubtless invoke in order to secure pecuniary redress for the wrongs which the complainant claims to have suffered as the result of the discrimination we here find to have been practiced against it and others by the defendant. There is possibly no necessary conflict between the view there expressed and a refusal by the Commission to measure the complainant's damages in this case, after having found that a discrimination existed; but there is some danger, in view of the ruling of the court in that case, that justice may be defeated altogether in this case if we proceed no further with it. We have concluded therefore to order a further argument early in the fall with respect to the amount of damages suffered by the complainant in this proceeding, and by the petitioners in the other cases in this group of complaints, as the result of the discriminations that we find to have existed. Under all the circumstances, this seems the prudent course to pursue. The order of the trial court dismissing the action of the Morrisdale Coal Company, for want of jurisdiction, has been taken for review to the circuit court of appeals; and if our further consideration of this group of cases results in awards of damages to the complainants and they resort to the courts for their enforcement, in case payment is contested by the defendants, the courts will then have the whole question before them and some definitive interpretation of the act with respect to the extent of the authority of the Commission and the courts in this regard will follow, and this is highly desirable for the future guidance of both.

An order will be entered in accordance with these conclusions.

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PROUTY, *Commissioner*, dissenting:

Although I am myself of the opinion that this case has been sufficiently talked about and sufficiently considered, and that it ought to be finally disposed of, still if the majority deems it necessary to hear further argument upon the question of damages, I do not dissent from that course. I do not agree with the holding of the majority that this Commission has no authority to assess and award these damages, and while it is not now proposed to make any order from which I dissent, I wish to express my views upon that subject.

To my mind there is a clear distinction between the *Joynes case*, 17 I. C. C. Rep., 361, and the one before us.

Joynes was a fruit merchant located at Pittsburg, whose complaint was that the defendant had systematically delayed the movement and delivery of his traffic, in comparison with that of his competitors, whereby he had suffered serious damage. The act of the defendant was alleged to be in violation of the third section and the holding of the Commission was that, even if in violation of that section, damages could not be awarded by the Commission. No rate, regulation, or practice of the defendant was involved. The act complained of was personal to Joynes. While it seems to me that under the terms of the eighth and ninth sections of the act Joynes, in a case like that detailed, had a cause of action for the recovery of damages against the defendant which he might prosecute before this Commission, it also appears to me that he might have brought his complaint in the first instance before the court. Had he begun such a suit it would not have been obnoxious to the objections sustained by the court in the *Abilene case*, 204 U. S., 426, or the *Pitcairn case*, 215 U. S., 481.

In the case before us this is different. Here is not a particular discrimination arising out of the conduct of the defendant toward a particular shipper, but rather a discrimination which inheres in a rule of the defendant applicable to all shippers and presumably enforced alike as to all shippers. While the courts might well be invested with exclusive jurisdiction to hear and determine suits like that of Joynes, it seems to me that in the case before us the Commission not only must, under the statute, but should, as a matter of convenience, award damages.

Sections 8 and 9 in my opinion give to the complainant a right of action for damages against the defendant and confer upon it the privilege of applying to this Commission for an order awarding those damages. It is impossible for me to put any other meaning upon the plain language of these sections, which read, so far as material to this question, as follows:

Sec. 8. That in case any common carrier subject to the provisions of this act shall do, cause to be done, or permit to be done any act, matter, or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this

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act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

SEC. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt.

Here is a clear statement that in case of a violation of the act resulting in damages to any person the carrier shall be liable for such damages, and an equally explicit declaration that the recovery of such damages may be had either by a proceeding before the Commission or by suit in court; but that both remedies shall not be pursued for the recovery of the same damages.

The reasons of the majority for declining to exercise this jurisdiction, which is explicitly conferred by the ninth section, are stated in the *Joynes case*. It is there said in substance that damages resulting from a violation of the act may be divided into two classes, "rate" damages and "general" damages. By rate damages are meant those damages which can be ascertained by computation from a reference to the rates of the carriers only. The Commission determines what the reasonable rate ought to be; it determines what rate has been paid; the damages are the difference between the rate exacted and the rate which should have been exacted. These damages the Commission can and should award.

General damages may involve a consideration of all those elements which enter into the determination of damages in other cases. There is no exact measure by which such damages can be computed. To assess them involves the consideration of evidence and the exercise of judgment. For the assessment of such damages this Commission has no greater qualification than a jury. Therefore, it is assumed that Congress, notwithstanding its express language to the contrary, did not intend to confer upon the Commission authority to deal with damages of that character.

In support of this somewhat novel canon for the interpretation of statutes the Commission refers to the action of the Supreme Court of the United States in the *Abilene case*, *supra*, in which that court held that, notwithstanding the language of the ninth section, by which a claimant is given an election between his suit in court and his proceeding before the Commission, nevertheless, in certain cases, the

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proceeding must be in the first instance before the Commission and can not be in court. Just as the Supreme Court in that case has read out of the ninth section the right to begin certain cases before the courts, so the Commission now proposes to read out of that same section the right to proceed in certain cases before the Commission.

I can find no case in which the Supreme Court of the United States has ever undertaken to qualify the express language of an enactment upon the ground adopted by this Commission in the *Joynes case*. That court has repeatedly said that courts have nothing to do with questions of expediency. Whether a statute is wise or unwise, whether it is expedient or inexpedient, whether the object aimed at is reached in the best way or not, are questions for the legislature, not reviewable by the courts. The *Abilene case*, as I read it, not only fails to sustain the position of this Commission in declining to accept jurisdiction in matters like that before us, but, upon the contrary, plainly holds, both by necessary inference and by express language, that in a case like the one now under consideration the only tribunal in which complaint can be brought and damages obtained is this Commission. If that be so, it is certainly the duty of the Commission, no matter how inconvenient the exercise of that function may be, to entertain the complaint, determine as best it can the damages, and award those damages by its order.

It should be clearly understood at the outset just what that violation of the act is of which complaint is made and for which damages are demanded.

It is true upon most coal-carrying roads, and was true upon the lines of the defendant during the period covered by this complaint, that in times of an active coal movement there are not sufficient cars to supply the demands of all mines. The amount of business which the miner can do depends upon the number of cars which he can obtain for the movement of his product. To furnish one mine with cars while they are denied to a competing mine means that the favored mine shall do business while the other stands idle. This renders preference in the furnishing of coal cars, a most serious form of discrimination, and makes necessary the establishment of definite and uniform rules and regulations for the distribution of such cars to different operations during the period of car shortage.

The complainant alleges that the system under which the defendant distributed its coal cars was unlawful and discriminatory, in that certain classes of cars were furnished to mines in competition with it and not counted against the distributive quota of those mines, which resulted in the giving of more cars to its competitor than it was justly entitled to have. The allegation is not that the defendant made the complainant the object of any special act of discrimination. It did

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not unfairly apply its system of distribution in determining the number of cars to which the complainant was entitled, nor did it fail to deliver at the complainant's mine the cars to which it was entitled under the scheme in force; but it applied a system or a practice which in its working out was unjust and discriminatory to the complainant.

The Commission finds that the method of distribution in force as to all shippers upon the lines of the defendant during the period covered by this complaint was unlawful and discriminatory and has directed the establishment of a different system for the future; but it declines to consider to what extent the complainant has been injured by the application of this practice, and to ascertain and award the damages which, confessedly, must have accrued.

To my mind there is no distinction between a practice of this kind and a rate. Every reason which requires the Commission to entertain claims of unreasonable rates and to award damages if the claim is sustained, requires with equal force that claims on account of discrimination by the application of general rules and practices of this character should be made in the first instance to the Commission and that damages should be awarded if the practice is found unlawful. If any distinction can be drawn between instances in which the Commission may and may not award damages for a violation of the act, that distinction should be founded, not upon the character of the damage, but upon the character of the act out of which the damage grows. If the thing alleged to be unlawful is a rate, regulation, or practice of general application which touches the entire shipping public alike, over which the Commission has control, with respect to which it must determine the reasonableness, and as to which it could order the substitution for the future of a different rate, regulation, or practice, then the proceeding for damages must be begun in the first instance before the Commission, and it is the duty of the Commission to ascertain and award the damages. This position is fully sustained by the recent decisions of the Supreme Court.

Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co., 204 U. S., 426, is familiar to all and only the briefest reference to it is needful.

The Cotton Oil Company claimed that certain rates imposed by the defendant for the transportation of cotton seed were excessive and brought suit in court to recover the amount of the excess. The transportation was interstate and the rates charged were those established under the provisions of the act to regulate commerce. The railroad defended upon the ground that a rate so established was conclusive upon all the world until changed by the Interstate Commerce Commission; that no suit could be brought either at common law or under the ninth section, but that the complainant must begin his proceeding by filing claim before the Commission.

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This contention was sustained by the Supreme Court in a convincing opinion. Said the court: The fundamental purpose of the act is to prevent preference and discrimination. For this purpose it is required that rates shall be established and notice given to the public in a certain specified manner and that the rate so established shall be collected of all shippers alike. If, now, suit can be brought for a recovery of a portion of this rate in the first instance, either in court or before the Commission, at the election of the shipper, it may follow that one jury will determine one rate to be reasonable, another jury a second rate to be reasonable, while the Commission may be of the opinion that still a third rate should be charged. This will of necessity produce the very discrimination which the act was intended to prevent. To give such a construction to the language of the ninth section would be to destroy the act itself.

It was held therefore in that case that the only remedy of a shipper for the payment of an excessive rate was to apply to the Commission, which, if it held the rate to be excessive, should order the establishment of a reasonable rate for the future and award damages to the complainant upon the basis of the rate so established.

Let it be carefully observed that this conclusion was not reached because the Commission was an expert body, more competent to determine the reasonableness of a rate than a jury; nor because the rate was filed in its office and under its direction, and could, therefore, be more conveniently ascertained and applied; nor for any consideration of expediency or convenience, but because the opposite holding would accomplish the very thing which the act to regulate commerce was intended to prevent.

This further situation might arise: If a rate has been pronounced unreasonable by the Commission and reduced, or if a rate has been voluntarily reduced by the carrier without any action of the Commission, may a shipper, with respect to a time anterior to the action of the Commission or to the reduction of the rate, maintain a suit in court for the payment of the excessive rate?

Apparently, the same reasoning which leads to the conclusion that application must be first made to the Commission in case of an existing rate would lead to the same conclusion with reference to a rate no longer in effect, for if such suits could be brought in court it might follow that one shipper would in fact pay one rate and another shipper another rate. Such is the conclusion of the court, which, on page 442, says:

* * * Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of and awarding reparation to individuals for
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wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force.

And, again, on page 446, the following language is used:

* * * And like reasoning would be applicable to the granting of reparation to an individual after the establishment of a new schedule because of a wrong endured during the period when the unreasonable schedule was enforced by the carrier and before its change and the establishment of a new one. In other words, the difference between the two is that which on the one hand would arise from destroying the uniformity of rates which it was the object of the statute to secure and on the other from enforcing that equality which the statute commands.

It appears, therefore, that whether the rate to be attacked is still in force or has been superseded by a lower or different rate, the complaint must be addressed in the first instance to the Commission, which is required to determine a reasonable rate and to award damages or reparation upon that basis. Whether, after the Commission has determined that a certain rate should have been charged during a given period, a shipper having paid the higher rate can begin suit in court in the first instance for the recovery of the excess, I express no opinion. It is evident that the discrimination complained of would not arise provided the rate fixed by the Commission could in any way be made conclusive in the suit instituted in court. However that may be, it is clearly the right of the shipper under all circumstances to file his claim with the Commission in pursuance of the provisions of the ninth section, and it is clearly the duty of the Commission, in the opinion of the Supreme Court, to entertain the claim, prosecute the inquiry, *and award the reparation.*

I am unable to see any valid distinction between an excessive rate and a rule or practice for the distribution of coal cars like that involved in this proceeding. In each case the rate or regulation is of universal application. In either case to apply one rule to one shipper and another rule to another shipper must result in preference. In each case the Commission has power to inquire whether the existing rate or regulation is lawful and to prescribe another in substitution for the future. No reason is urged by the court in the *Abilene case* in justification of its holding there which would not apply with equal force in support of a similar holding here. That this must be so is no longer debatable since the decision of the Supreme Court of the United States in *Interstate Commerce Commission v. I. C. R. R. Co.*, 215 U. S., 452, by which it was affirmed that the authority of this Commission over a regulation for the distribution of coal cars is exactly the same as its authority over the rate of transportation itself.

The Illinois Central Railroad is a large carrier of coal and establishes, in common with other coal-carrying railroads, rules for the distribution of coal cars, in times of car shortage, between the different

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mines served by it. Complaint was made to the Commission that the method of distribution in force upon the Illinois Central resulted in unjust discrimination against the complainant. There was no question as to the manner in which the capacity of the mines was ascertained and the percentage to which each mine was entitled determined, but it was asserted that certain classes of cars were not counted against the assignments of the mines to which they were delivered. In allotting cars the Illinois Central, according to its regulations, did not count private cars which were owned by the mine, foreign railway fuel cars which had been delivered to the Illinois Central by some other railroad for the purpose of being taken to a particular mine, and the fuel cars of that company itself which were used in transporting coal from the mine to the place where it was to be used by the railroad. The complainant contended that all these classes of cars should be counted against the assignment of the mine.

The Commission held with the complainant and made an order directing the Illinois Central to count all such cars in the future. That company conceiving this order to be unlawful petitioned to the circuit court for the northern district of Illinois for an injunction against its execution. Upon hearing that court was of the opinion that the order of the Commission was correct as to private cars and foreign railway fuel cars, but incorrect as to company fuel cars, and an injunction was accordingly issued restraining the operation of the order as to such company fuel cars.

From this the Commission appealed to the Supreme Court of the United States, which reversed the decree of the circuit court and sustained the order of the Commission in full.

The contention before the Supreme Court was that the only order which the Commission could make under the fifteenth section was one prescribing a rate or a rule, regulation, or practice affecting a rate; that this regulation, while the effect of it might be to prevent discrimination, was not a regulation affecting rates and therefore not within the power of the Commission to make. The court held that a regulation of this kind was within the terms of the fifteenth section; that, therefore, the Commission might prescribe the rule which it did, and that such rule when prescribed would be binding upon the Illinois Central in its relations with all its coal mines.

This case determines that there is no distinction between an order of this Commission fixing the rate for the future and an order establishing a rule for the distribution of coal cars; and this being so, I am utterly unable to see any ground upon which a distinction can be made between the remedy which is open to the shipper for the recovery of damages in the two instances. If he must, in case of the excessive rate, apply to the Commission in the first instance, so in the case

of the discriminating practice he must first make application to this body. To permit the institution of a suit in court until the rule has been fixed by the Commission would result in exactly the same discrimination and preference in case of the regulation touching the distribution of cars as it would in case of the excessive rate. It must follow as a necessary inference from this decision that courts are without jurisdiction to entertain in the first instance suits for damages resulting from the enforcement of improper rules for determining the capacity of its coal mines and the distribution of its coal cars in times of shortage between the different mines served. Any possible doubt upon this point has been laid at rest by the decision of the Supreme Court in *B. & O. R. R. Co. v. Pitcairn Coal Co.*, 215 U. S., 481, decided at the same time with the *Illinois Central* case just referred to.

The twenty-third section of the act gives a remedy through the district and circuit courts of the United States by mandamus in instances where a carrier is granting a preference in the movement of traffic or in the furnishing of cars or other facilities. The Pitcairn Coal Company, claiming that the Baltimore & Ohio Railroad was discriminating in favor of its competitor by the rules which it had established to govern the distribution of coal cars, began proceedings for mandamus against that company. It is not necessary to detail the various specifications of preference set forth in that proceeding. The general system of car distribution in vogue on the Baltimore & Ohio was analogous to that established by the Illinois Central, and the grounds of complaint, while more numerous in this case than in that, had mainly to do with the failure to count different classes of cars.

After an elaborate hearing upon the facts the circuit court sustained the contention of the relator, the Pitcairn Coal Company, upon a single item, denying in the main the prayer for relief. Upon appeal by the Pitcairn Company, the circuit court of appeals reversed the court below and held that the relator was entitled to the relief prayed for. The Supreme Court of the United States, upon appeal by the Baltimore & Ohio Company, decided that the circuit court had no jurisdiction under the twenty-third section, and that the suit should be dismissed. It placed its decision entirely upon the *Abilene* case, pointing out that there was no distinction between a rule or regulation of this character and a rate, and that therefore suit should have been begun in the first instance before the Commission.

It is therefore now determined beyond controversy that the complainant in the case before us could not at the time this complaint was filed have commenced in court, either at common law or under the twenty-third section, or under the ninth section, a suit at law, for a

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correction of the discriminations complained of or the recovery of the damages incident upon those discriminating practices. It must have applied to this Commission. How, then, can this body consistently decline to exercise the jurisdiction which is plainly cast upon it by the statute as interpreted by the court of last resort and refuse to pass upon its claim for damages?

The opinion of the majority indicates that complaint may be made to the Commission, which will thereupon determine whether the regulation attacked is or has been in violation of law. If the Commission condemns the regulation, the complainant must then begin an independent suit in court for the recovery of his damages, upon the basis of the regulation approved by the Commission. The theory seems to be that the Commission has jurisdiction to prescribe the rule, but has no jurisdiction to award the damages which have resulted from failure to establish and observe a proper regulation in the past.

I express no opinion as to whether, if this Commission has definitely determined that a given rate or a given regulation for a definite period has been discriminatory or excessive and has prescribed the rate or regulation which will be reasonable or just, a shipper may or may not begin suit in court for damages based upon the rate established by the Commission. Such a rule would not be obnoxious to the objections found by the Supreme Court to the maintenance of the suits of the Abilene Cotton Oil Company and the Pitcairn Coal Company. It may be that such instances would present an opportunity for the alternative mentioned in the ninth section. I also think that a case like that of Joynes, where the act of the carrier is directed to a particular individual and does not consist of the enforcing against the public of a general rate, regulation, or practice, presents an instance where the party aggrieved may either sue in court or present his claim to the Commission. But this complainant must have begun before the Commission and the Commission should have jurisdiction to award the damages.

Upon what theory does the conclusion of the majority to the contrary rest? What is there in the language of the act which supports it? What is there in the structure of the act which lends countenance to it? To my mind both the language and the theory of the statute are directly opposed to it.

Nothing can be plainer than that Congress intended to confer upon this body the authority and to lay upon it the duty to award damages for infractions of the act. This idea runs through the entire framework of the statute.

Section 9 provides that the person damaged may apply to the Commission or may bring suit in court, but shall not adopt both remedies for the same violation.

Section 13 provides that if the carrier "shall make reparation for the injury alleged to have been done, such carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of."

Section 14 provides that "in case damages are awarded such report shall include the findings of fact on which the award is made."

Section 16 declares that if the Commission shall determine that any party complainant is entitled to an award of damages it "shall make an order directing the carrier to pay to the complainant the sum to which he is entitled, on or before a day named." The same section fixes the period of time within which claims for damage shall be filed with the Commission and within which suits shall be begun in court to enforce the orders of the Commission awarding damages. That section also prescribes in detail the legal proceedings by which an award of damages may be enforced against the defendant.

Up to the time of the *Joynes case* it had been, as is pointed out by Commissioner Lane in his dissenting opinion in that case, 17 I. C. C. Rep., 361, the uniform practice of the Commission to award reparation in all cases where damages accrued from a violation of the act.

It is said that the Interstate Commerce Commission is an expert tribunal and that the assessment of damages is not within the range of its expertness; that it is an administrative body, and that the determination of damages is judicial and not administrative; all of which amounts to saying that the Commission is not qualified to deal with this question.

To this I am not prepared to assent. I can not admit that this body is not as well qualified as a traverse jury to assess the damages of these complainants. For years we have investigated, in one form and another, in all its ramifications, the business of mining and selling coal. We understand, as no jury without that knowledge possibly could, the effect of this discrimination upon the business of the coal operator. In my judgment the decision of the Commission would be more intelligent and less likely to be influenced by prejudice than that of a jury. But all this is entirely beside the mark; Congress, in set terms, has made it the duty of this Commission to award damages, and it is no concern of ours whether that provision of law is wise or unwise.

It is said that the Commission has no time to deal with such matters, and it certainly is true that its duties are various and exacting. But this, again, goes to the expediency, and that is not for our consideration; we can not decline to attempt to discharge the duties prescribed by the statute because it is inconvenient to do so.

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The opinion of the majority holds that the complainant must first obtain from the Commission a finding that the regulation in effect has been discriminatory and determining what regulation ought to have been maintained; armed with this finding he may then bring suit in court for the recovery of his damages. It seems to me that certain practical difficulties will be found in the application of such a rule, one of which is suggested by the present case.

The complaint asks damages from 1903 to the present time. The Hepburn Act provides that suits for the recovery of damages shall only be entertained by the Commission when filed with it within two years from the time the cause of action accrues, but it further provides that within a year from the passage of that statute complaints may be filed embracing all damages which had previously accrued. This complaint was seasonably filed to recover damages for the period named.

The complainant has diligently prosecuted its complaint, and now obtains a holding from the Commission that the regulation attacked is unlawful. If our order be made effective on June 1, 1910, it would follow that the complainant is then for the first time in position to maintain a suit in court.

But the order of the Commission fixing this regulation as to the distribution of coal cars is not of necessity final. It may be attacked in the courts by the railroad, and still another period of from one to three years may elapse before it is finally determined what regulation should have been in force during the period when these damages accrued.

What, now, is the rule to be applied as to the running of the statute of limitations? The usual period of limitation applicable to suits for the recovery of damages of this character is from three to six years. If the six-year period were to be applied the complainant has lost his damages for at least one year. Having seasonably begun his proceeding in the only forum in which it could be begun, and having prosecuted that proceeding with all diligence, he is, nevertheless, deprived of the right to the damages for a portion of the period.

It may be suggested that the filing of the complaint before the Commission may be regarded as the beginning of the suit which is subsequently brought in court. But there is no connection whatever between the proceeding before the Commission and the suit in court. All allegation as to damages for discrimination is immaterial and out of place before the Commission. And what of the competitors of the complainant who have suffered the same discrimination? Must these parties all file suits before the Commission to determine the regulation which ought to have been observed by the railway,

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although the determination in one case must of necessity control in all cases?

It may be said that a complainant should begin two proceedings, one before the Commission to determine the regulation or practice and another in court for the assessment of his damages, and that the suit in court should be continued until the Commission has prescribed the rule. But the statute explicitly declares that while the party injured may begin either before the court or the Commission he shall not begin in both places.

The seventh amendment to the Constitution of the United States provides that in suits at common law where the value in controversy exceeds \$20 the right to trial by jury shall be preserved. The effect of this constitutional provision, if any, upon the question before us, is yet to be determined by the courts.

The original act to regulate commerce provided that an order for the payment of damages should be enforced by the court sitting as a court of equity. Under this state of the statute the Commission held that it could not award damages, where a determination of fact was necessary, for the reason that the parties would thereby be deprived of their right to a jury trial. For the purpose of removing this objection the act was amended March 2, 1889, so as to provide that where suit was brought to enforce the Commission's order for damages either party might demand a jury trial. That the Commission understood that under the law as amended it could and should award damages appears from the following language, which occurs in the last case in which an award of reparation was refused upon this ground. *Rawson v. Newport News & Mississippi Valley Co.*, 3 I. C. C. Rep., 266, 279:

As to the reparation claimed, prior to the amendment of the sixteenth section of the act to regulate commerce of March 2, 1889, we held in several cases, that as the statute provided for no trial by jury in the courts to enforce our awards in controversies such as were triable at common law and where more than \$20 was involved, we could award no reparation in consequence of the provisions of the seventh amendment to the Constitution of the United States. The amendment of the statute of March 2, 1889, was made to cover this feature of the statute, but the amendment expressly provides that it shall have no reference to proceedings pending at the time the amendment was adopted; and this proceeding was pending at that time.

In my own view a proceeding to recover damages for failure of a railroad company to publish and maintain a certain rate or regulation is not a suit at common law within the meaning of the seventh amendment. The legislature may prescribe either by itself or through a commission the rate or regulation to be observed. Neither the shipper nor the carrier has any right at common law to a particular rate, nor need the reasonableness of the rate prescribed by the legislature be submitted to a jury. The legislature might undoubtedly enact

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that the published rate or regulation should be binding upon all until changed. If, now, it allows reparation with respect to the past it may do so upon condition that the amount shall be determined in a specified manner not involving a trial by jury.

The opinion of the majority makes no reference to the seventh amendment, nor do I see that the conclusion reached derives any support from that source, since that amendment must apply equally to the assessment of all kinds of damages. In awarding "rate" damages the Commission must determine the existence of certain facts, as the weight of the shipment, its character, the conditions of the billing, etc.; and these findings of fact may be conclusive upon the right of the complainant to recover. If such findings must be submitted to a jury in one class of cases they must in the other.

The delays and expenses of the law are proverbial. Especially is this true where the defendant is a railroad company with unlimited resources. It is notorious that shippers forego claims which they believe to be just rather than incur the cost and annoyance of attempting to enforce them by law.

One cardinal purpose of the act to regulate commerce was to provide a speedy and inexpensive method by which the shipper could obtain relief in such cases. My own observation is that, to an extent, this expectation of the framers of the act has been realized. The complainant does ordinarily obtain his order for damages with less delay and outlay than in court, and the railroad generally pays the award.

The complainant claims to have been damaged by more than \$100,000 through the discrimination which we have found to exist, and its evidence tends strongly to support that claim. A material part of these damages never can be recovered unless awarded in this proceeding, and that through no fault of the complainant, which seasonably began and has zealously prosecuted its complaint. Days have been spent in the taking of testimony; all the facts are before us, and I strongly feel that we should proceed to assess and order the payment of these damages.

The opinion of McPherson, Judge, in *Morrisdale Coal Co. v. P. R. R. Co.*, 176 Fed. Rep., 748, which has come to my attention since the foregoing matter was prepared, fully sustains the position taken.

There are two other points to which I wish to call attention.

This record indicates that at times the number of private cars delivered to certain mines has exceeded the quota of those mines. Even if private cars had been counted against the assignment of those mines, they would still have received more cars in proportion to their rating than the complainant.

In such case it seems to me that the railroad is guilty of discrimination, although it delivers to the mine only the cars which that mine owns. If, for example, a railroad only had sufficient cars for its own fuel supply the mine owner who did not sell coal to the company and who owned no cars himself, would obtain no cars whatever, while his competitor with an outfit of individual cars would be supplied. I do not think a railroad can lawfully devote its tracks and its motive power to the service of one mine, while declining to give to its competitor a similar service.

Probably, in the absence of contract provision thereto, a railroad would have no right to divert the cars of one mine to the use of another, but it might and should decline to put private cars into service except upon condition that there shall be no discrimination of this kind.

This may not be a matter of much importance in the present case. The use of private cars is growing less, and the question will, in all probability, never be a living one. I do not, therefore, care to discuss it, but wish simply to note my position. In the matter of car distribution every car should, in my opinion, be treated as though owned by the railroad upon whose line it is in service.

The rule approved by the Commission for the rating of mines takes account both of physical capacity and commercial sales; and this, I think, is correct. When, however, the output has been limited by inability to obtain cars, and when that inability has been due to the discriminating practices of the defendant, it is evident that the application of this rule perpetuates at the outset the effect of the past discrimination. The complainant, owing to this discrimination, has not been able to sell as much coal, in comparison with its competitor, as it otherwise would, and therefore its rating upon this basis is not what it justly should be. For this reason it seems to me that it would be more just to begin upon the basis of physical capacity alone and subsequently introduce the factor of commercial sale, considering no sales which had been made under the discriminating rating.

LANE, *Commissioner*, also dissenting:

I am in full accord with that part of the Commission's report which condemns the existing car distribution rules of the Pennsylvania Railroad Company and prescribes the rules which shall be observed in the future, but I can not agree that the Pennsylvania Railroad Company's method of rating mines for purposes of car distribution is unobjectionable.

Under the recent decisions of the Supreme Court this Commission has been vested with what amounts to absolute authority over car distribution rules. Under an extension of the doctrine laid down in the *Abilene Cotton Oil case* it is now the law that a shipper does not

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have the right, before appealing to the Commission, to invoke the aid of a court of law in order to compel a carrier to furnish the transportation facilities to which the shipper believes he is entitled. It is further established that the courts will not inquire into the reasonableness of the rules prescribed by the Commission nor disturb the Commission's orders unless it appears that some constitutional guaranty has been violated or that the Commission has not proceeded in accordance with law. These decisions cast upon the Commission a responsibility as to railroad practices equal to that which rests upon it as to railroad rates. This body is made in the first instance the sole resort of the shipper; from our decision the shipper has no appeal, while the carrier's right of review is limited to questions of law. In the great majority of cases, therefore, our judgment must be a final determination of the questions involved. In view of this responsibility the decision in this case becomes of first importance.

Rules for the distribution of cars in periods of car shortage are of very recent invention, and it has appeared affirmatively in the cases which have been brought before this Commission, as well as in those before the courts, that the whole question of car distribution is in a state of flux; the carriers have not yet devised a code of rules which is satisfactory either to themselves or to their shippers. It is a matter of most general knowledge, brought out and clearly established in the coal investigation made by the Commission some three years since, that the distribution of cars to coal mines has been based largely upon interest, prejudice, and pull. There has been little, if any, pretense that cars were divided among coal mines upon a basis which the law could recognize as fair and nondiscriminatory. Since this investigation it appears that the carriers have been making an honest effort to establish rules which would not be open to objection upon the ground of discrimination, but these rules are as yet but experimental—they do not represent the crystallized experience of years—at present they are but tentative. The preferences which have been shown to owners of private cars and to mines supplying railway fuel show clearly that the carriers are but feeling their way to a basis that will be more equitable than any hitherto obtaining. Instead, therefore, of regarding the rules involved in the cases recently reviewed by the Supreme Court as controlling this Commission, we are justified in saying no more upon this subject than that the views heretofore expressed are the result of such light and experience as we have been able to gain upon a most difficult subject, and are properly subject to amendment at any time. Moreover, it must be remembered that the Commission has not given its endorsement either to physical capacity or commercial capacity or to a blend of the two as a basis for the allotment of cars subject to distribution in a time of shortage.

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As explained in the majority report, the Pennsylvania Railroad Company fixes the rating of a mine for purposes of car distribution by adding to the ascertained physical capacity the commercial output of the previous year and dividing the sum by two. I am not convinced that past commercial performance can be fairly taken as a measure of present-day needs. However, conceding that a mine's past shipments under normal conditions may properly be taken into account, it is clear that they do not afford an index of actual shipping capacity when they have been affected by numerous discriminatory practices. The undisputed testimony in this case shows that the complainant has been subjected to gross discrimination. The complainant was often compelled to go without cars for days at a time while certain of its competitors had no difficulty in securing an abundant car supply. The record further shows that the Pennsylvania Railroad Company spiked the switch leading to the mine of the Hillsdale Coal & Coke Company so that for nineteen months the complainant was unable to ship a ton of its output. This latter circumstance, according to the majority report, does not constitute unjust discrimination. If inequitable car distribution rules can be held discriminatory, and the Commission so finds, how can we look with greater benignity upon the absolute refusal of the defendant to serve one shipper while transportation facilities are freely accorded to his competitors? The indisposition of the majority to attach any importance to this phase of the complaint is inexplicable. In my opinion the spiking of the complainant's switch by the Pennsylvania Railroad Company constitutes unlawful discrimination in its most vicious aspect.

Be this as it may, the finding of the Commission is as follows:

Upon all the facts shown of record the Commission therefore finds that throughout the period of the action the system upon which the defendant distributed its available coal car equipment, including system fuel cars, foreign railway fuel cars, and individual or private cars, has subjected the complainant to an undue and an unlawful discrimination.

From this finding it necessarily follows that the output of the complainant's mines during the period in question does not fairly measure its normal commercial capacity. Its shipments have been arbitrarily and unjustly restricted by the operation of the unlawful rules of the defendant, and when this Commission permits the Pennsylvania Railroad Company to take that restricted commercial output as a factor in determining the rating of the mine for purposes of car distribution, it is obvious that the past discrimination is being indefinitely perpetuated. This proposition seems so self-evident that it ought not to be necessary to support it by illustration.

us take the case of a mine the physical capacity of which is 500 per day. By reason of the discriminatory practices of which

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it has been the victim its commercial output during the past year was restricted to 250 tons per day. A competitor, on the other hand, with the same physical capacity as well as the same business efficiency, was favored by the carrier and thereby enabled to market all the coal that it could produce during the preceding year. Under the rule which we are now considering the rated capacity of the mine which has been the victim of discrimination is some 375 tons per day, while that of the favored mine is 500 tons per day. Again, take the case of a mine whose switch was spiked so that it had no output whatever during the past year. Under the Pennsylvania Railroad Company's rule its present physical capacity of 500 tons is added to its past commercial capacity (zero) and the sum divided by two, the result being 250 tons, the rating of the mine for purposes of car distribution. Can there be any question that by sanctioning this rule we are permitting the defendant to prolong its discriminatory practices indefinitely? It would appear that this discrimination will be progressively diminished as the years go by, but this, I submit, does not temper the injustice of the rule.

The majority report commends the method employed by the Baltimore & Ohio Railroad Company in rating mines for purposes of car distribution. Under the Baltimore & Ohio rule the ascertained physical capacity is taken in conjunction with the commercial capacity during a period of free car supply in each of the two preceding years, and the result divided by three. This method is even more objectionable than that of the Pennsylvania Railroad Company. In the first place it should be observed that we are considering rules for the distribution of cars during a period of car shortage. It is obviously unscientific, therefore, to look to a mine's output during a period of free car supply as an index of its probable needs during a period of car shortage. "A period of free car supply" necessarily connotes a season of slack demand. This means a period during which many of the weaker mines find it unprofitable to operate at all, whereas the operations which are more firmly established, and which perhaps have large contracts to fill, occupy the field almost alone. On the other hand, a period of car shortage connotes a period when the demand for coal has been so increased that all the mines find it profitable to operate. In view of these considerations I regard it as indisputable that commercial output during a period of free car supply is not an equitable measure of probable output during a period of car shortage.

In the second place it should be remembered that the Baltimore & Ohio rule was expressly condemned by the Commission in its report following the coal and oil investigation in these words:

The effect of the system of car distribution in use upon the Baltimore & Ohio Railroad, and especially the method of ascertaining the percentage of cars to which each
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shipper is entitled by taking the output in the summer time, resulted in increasing the percentages of the large operators with which the Baltimore & Ohio Railroad Company was interested and in irregular and insufficient car service to the smaller operators who did not own "individual cars" and who by lack of regular car service were unable to make satisfactory contracts for the sale of their output.

Consistency alone would seem to require a similar finding in the case now confronting us; but aside from that I feel that the facts developed in that investigation, as well as in other proceedings before this Commission, conclusively demonstrate the injustice of this rule. The Commission states, on page 59 of its Report on Discriminations and Monopolies in Coal and Oil:

During this period of remarkable growth in the coal tonnage on said road (the Baltimore & Ohio Railroad) the increase of its equipment and betterment of its roadway, some coal operators were compelled to dispose of their plants at a loss because they were unable to get cars; other persons, during the same period, desiring to become shippers, were subjected to serious discouragements, that being the policy of the road.

Citations need not be multiplied in order to make it clear that the past output of a mine under the conditions heretofore obtaining affords no criterion of its normal commercial capacity.

Perhaps the most serious fault in the Baltimore & Ohio rule is this: The element of commercial capacity, which may have been arbitrarily diminished by the unlawful conduct of the carrier, is allowed to count for twice as much as present physical capacity in fixing the mine's rating. This permits the carrier to accentuate and prolong past wrongs in a greater degree than the rule of the Pennsylvania Railroad Company. A rule which leads to such results is not susceptible of defense either upon legal or moral grounds.

We should not be unmindful of the fact that the rules we are considering are as unjust to a newly opened mine as to one which has been the victim of discriminatory practices. This is clearly pointed out by Judge Pritchard in his able opinion in the *Pitcairn Coal case*, 165 Fed., 130:

Under the present method of ascertaining the percentage of cars to which the shipper is entitled, those shippers who are just beginning to develop their property are placed at a great disadvantage, and owing to which it is well-nigh impossible for a shipper thus situated to secure a sufficient allotment of cars as to enable him to dispose of the product of his mine in such quantities to secure anything like a substantial development of his property. Therefore we are of opinion that such system of coal-mine rating is unfair and inequitable to new mines located along the line of this railroad company, where there are a number of old and established mines. To hold otherwise would be to give the Fairmont Coal Company and other favored companies an undue and unreasonable preference, which, as we have heretofore stated, is forbidden by the act, and we are therefore of opinion that the court below erred in ruling that this particular method was a fair and reasonable one. We think the true rule as to the basis for the distribution of cars is correctly stated by Judge Goff in the case of *United States ex rel. Kingwood Coal Co. v. W. Va. No. R. R. Co.*, *supra*, and that, in determining the percentage of cars to which each mine is entitled, the railroad company should be guided solely by the physical capacity of the mine to furnish coal for shipment.

In view of the injustice of the car distribution practices of the defendant and other coal-carrying railroads there is only one course properly open to the carriers at the present time. The ideal basis for the rating of mines is of course present-day commercial capacity. The difficulty lies in attaining that ideal. Physical capacity may not be a perfect standard, but at least it more nearly approaches the ideal than a rule which rests in part upon commercial output during a period when unlawful discrimination was the order of the day. I believe that it would not be unfair to compel the carriers from this time forth to prorate their available equipment among the mines which they serve upon a physical capacity basis alone. This would enable all mines to start upon approximately even terms and would deny to mines which have been unduly favored in the past the right to retain the full measure of that unjust advantage. If, after having given the physical-capacity basis a fair trial for a year, it should appear that it does not fairly represent commercial needs, proper amendments could readily be made. Past commercial performance would not then be such an inequitable factor as it is to-day.

Commissioner CLEMENTS joins in this dissent.

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No. 1139.

W. F. JACOBY AND ISAAC C. WEBER, TRADING AS W. F.
JACOBY & COMPANY,

v.

PENNSYLVANIA RAILROAD COMPANY.

No. 1111.

CLARK BROTHERS COAL MINING COMPANY

v.

SAME.

Submitted January 30, 1909. Decided March 7, 1910.

1. The special allotment daily of 500 of its system coal cars to a particular operator for the purpose of supplying foreign steamships with coal found to be a discriminatory practice so long as they were not counted against the rating of those mines during periods of car shortage. A like view expressed of the sale by the defendant of 1,000 of its coal cars to the same operator.
2. Following *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, *ante*, p. 356, defendant's rules and regulations for the distribution of coal cars during periods of car shortage found to be unlawful.

Harry Boulton, John H. Minds, William A. Glasgow, jr., and John William Hallahan, Sd, for W. F. Jacoby & Company.

David L. Krebs for Clark Brothers Coal Mining Company.

Francis I. Gowen and George V. Massey for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The mines of the complainant in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, just disposed of (*ante*, p. 356), are located near the town of Glen Campbell, in Indiana County, in the state of Pennsylvania, on the Cush Creek branch of that part of the defendant's Cambria and Clearfield division which extends northward from Cresson; and the chief competitor of that complainant has been D. E. Williams & Company, whose mines are in that district. In the above-

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entitled complaints the mines are in another mining district in the bituminous coal regions of Pennsylvania and on another part of the Cambria and Clearfield division of the defendant. They are located about nine miles west of Osceola Mills, in or near the town of Smoke Run, in Clearfield County, on what is known as the defendant's Moshannon branch, which, at Osceola Mills, joins its so-called Tyrone division extending northward from its junction with the main line at Tyrone. Since October, 1905, the Clark Brothers Coal & Mining Company has operated, under leases, three mines known as Falcon No. 2, No. 3, and No. 4. The largest and best equipped of these mines, Falcon No. 2, was operated prior to that time by the petitioner, W. F. Jacoby & Company, which had taken over the lease of the mine in April, 1904.

It is Falcon No. 2, and the period from April, 1904, to October, 1905, that are involved in the first of the above-entitled complaints. That mine is said to be one of the best equipped collieries in the district, and on April 1, 1904, had an inventory valuation of \$30,000. It is provided with an underground electric system for hauling its mine cars and with a first class wooden tippie and a patent dump; it is also well supplied with mine cars and has ample switch-track facilities; and its grades favor the out movement of loaded mine cars. There are said to be from 175 to 200 acres of solid coal in the three Falcon mines, varying in thickness from $2\frac{1}{2}$ to 5 feet; and in No. 2 mine there were, in 1904, about 100 acres of coal remaining, some 30 acres having been mined prior to that time. The coal is accepted as a superior grade of steaming coal that is readily marketed in New England, New Jersey, New York, and Pennsylvania, being shipped all rail over the defendant's lines to those points and also to tide water.

It is not contended that there was any unfairness in the rating assigned to Falcon No. 2 during the period from April, 1904, to October, 1905, when it was being operated by the complainant, W. F. Jacoby & Company. The rating then given to it was 450 tons a day, and this the complainant in that case admits was a close approximation of its actual output capacity. It appears, however, that from October, 1905, to May, 1907, when Falcon No. 2 was being operated by the Clark Brothers Coal & Mining Company the rated capacity credited to the three Falcon mines was 9 cars or 315 tons for No. 2, 1 car or 35 net tons for No. 3, and 2 cars or 70 net tons for No. 4, making a total capacity of 12 cars or 420 tons for the three mines. In April, 1907, these ratings were increased to 13 cars or 455 tons for Falcon No. 2, 2 cars or 70 tons for Falcon No. 3, and 5 cars or 175 tons for Falcon No. 4, making an aggregate capacity assigned to the three mines of 20 cars or 700 tons daily. The complainant in the second of these complaints, in support of the theory, advanced also in the *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, ante, that commercial
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capacity ought to be eliminated, calls attention to the fact that the defendant in its answer admits that during the period in question the actual physical capacity of the three Falcon mines was 709 tons, 144 tons, and 270 tons, respectively, or a total of 1,133 tons in all, which would require 31.1 cars daily to move. On the other hand it is to be noted that the petitioner in the second complaint contends that the physical capacity of the three mines was only 600 tons, 125 tons, and 300 tons, respectively, or 1,025 tons in the aggregate per day. Finally it must be observed that neither of the petitioners made complaint to the defendant, at that time, of the ratings of these mines, and when finally they did complain the defendant accepted their engineer's statement or estimate as to their actual working capacity. Under these circumstances, we see no substantial basis for any finding of discrimination against the complainants with respect to the defendant's ratings of their mines.

The damages sought to be recovered in the first of these complaints amount to \$51,950.49 and in the second complaint to \$36,901.13. Falcon No. 2 was purchased from the Penn Collieries Company, in which W. F. Jacoby seems to have been interested. The transaction appears of record as a purchase, but it may have been a mere change of ownership on the basis of nominal values. Nevertheless, the record shows a purchase price of \$25,000 and that W. F. Jacoby & Company retained the mine until October, 1905, when they sold it for \$32,500, or for \$7,500 more than they paid for it. In the meantime they had mined 55,000 tons of coal and sold it apparently at a profit of about 30 cents a ton. Whether the mine could have been sold so well if more coal had been taken out of it by the complainant is a question as to which it is difficult to arrive at any satisfactory conclusion. It is to be noted, however, that the complainant claims to have had actual orders for a substantial portion of the output capacity of Falcon No. 2.

As we understand these cases, the substantial points upon which discrimination may be predicated are as follows:

There are a number of mines on the Moshannon branch of the defendant that are owned by other operators, but in this connection it will suffice to mention only the six mines operated by or for the Berwind-White Coal Mining Company, one of which, known as Eureka No. 27, immediately adjoins the complainant's Falcon No. 2. The same "D" coal vein is worked in these two mines. The quality of the coal is therefore the same and it is claimed that the capacities of the two mines were substantially the same at the period involved in the first of these two complaints. Falcon No. 2 is said in fact to have been better equipped, and if this was the case it would seem to have had an advantage over its neighbor if it had been placed on an equal footing in the matter of car supply.

But neither Falcon No. 2 nor the mines of the complainant, the Clark Brothers Coal & Mining Company, was placed on an equal footing with the mines of the Berwind-White Coal Mining Company in the matter of the distribution of the defendant's available coal-car equipment during the period of the actions.

During the years 1902, 1903, and 1904 the employees of the defendant that were in charge of the distribution of coal-car equipment had special orders for giving to the Berwind-White Coal Mining Company a special allotment of 500 cars daily. That company had contracts for supplying coal for certain steamships sailing from New York Harbor. Complaint had been made that these steamers were frequently delayed because of a lack of coal, and the defendant felt that it was warranted in making that special arrangement with the coal mines that had undertaken to supply them with fuel. This preference was the occasion of comment by the Commission in its report in the coal and oil investigation. Few, if any, of these specially assigned cars reached the Berwind-White mines in this particular mining district, and therefore it is difficult to determine to just what extent these complainants were prejudiced by that preference of a competing company's operations in another district; nevertheless, it was inequitable in principle and undoubtedly so to some extent at least in its results, and we see no grounds upon which it can be justified by the Commission. On the contrary, it must be condemned in strong terms as an undue preference of one company and district and an undue discrimination against coal operations in another district.

Another point also mentioned in our report in the coal and oil investigation just referred to is that 1,000 of the defendant's own system coal cars were sold by the defendant to and were thus made available by the Berwind-White Company. The defendant to that extent diminished its capacity to supply the coal-car requirements of other coal operations upon its lines. While the right, as a legal proposition, of an interstate carrier to sell its equipment has not been discussed before us in these cases, and therefore will not be considered in this report, the least that can be said of that transaction is that it indicates a desire on the part of the defendant at that time to forward the interests of a particular company at the expense of its competitors.

It is established with reasonable clearness on the record that the Berwind-White mines during the years 1906 and 1907, as well as to a period immediately preceding those dates, were daily in receipt of coal cars in large numbers and were therefore kept in operation almost continuously while the complainants received an inadequate supply and were not able, therefore, to run their mines to the best

advantage. This difference is largely explained by the fact that the Berwind-White Coal Mining Company owned a large number of private cars and also enjoyed contracts for supplying the defendant and its connection with coal. Under the rules of defendant, fully explained in *Hillsdale Coal & Coke Co. v. P. R. R. Co.*, ante, the ownership of such private cars and the enjoyment of these contracts resulted in the special allotment to the mines of that company of these so-called assigned cars. For the reasons explained at some length in that case those rules operated as an undue discrimination against these complainants, and we so find. But for the present and for the reasons there explained we shall limit our order to a finding that in the several respects here mentioned the defendant was guilty of a discrimination against these complainants, leaving for determination after further argument the question of the extent to which the complainants may have been damaged thereby.

An order will be entered in accordance with these conclusions.

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No. 2915.
COMMERCIAL CLUB OF OMAHA
v.
BALTIMORE & OHIO RAILROAD COMPANY ET AL.

Submitted May 13, 1910. Decided October 4, 1910.

Rates on butter, eggs, and poultry, in carload lots, from Omaha to points in Central Freight Association and Atlantic Seaboard territories not found unreasonable; petition for institution of through routes and joint rates denied.

E. J. McVann for complainant.

W. A. Parker for Baltimore & Ohio Railroad Company.

C. B. Fernald for Baltimore, Chesapeake & Atlantic Railway Company; Central New England Railway Company; Cleveland, Akron & Columbus Railway Company; Cumberland Valley Railroad Company; New York, Philadelphia & Norfolk Railroad Company; Northern Central Railroad Company; Pennsylvania Company; Pennsylvania Railroad Company; Philadelphia, Baltimore & Washington Railroad Company; Pittsburg, Cincinnati, Chicago & St. Louis Railway Company; Richmond, Fredericksburg & Potomac Railroad Company; Toledo, Peoria & Western Railway Company; Vandalia Railroad Company; New York, New Haven & Hartford Railroad Company; and New England Navigation Company.

S. A. Lynde and *C. C. Wright* for Chicago & North Western Railway Company; and Chicago Great Western Railway Company.

W. S. Kenyon for Illinois Central Railroad Company.

M. L. Bell and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

James E. Kelby for Chicago, Burlington & Quincy Railroad Company.

J. J. Farrell, *H. B. Wright*, and *S. B. Shilling* for National Creamery Butter Makers' Association, intervener.

S. B. Shilling and *George W. Bull* for Chicago Butter & Egg Board, intervener.

REPORT OF THE COMMISSION.

LANE, Commissioner:

This petition puts in issue the lawfulness of defendants' rates on butter, eggs, and poultry in carload lots of 20,000 pounds or over, 19 I. C. C. Rep.

from Omaha, Nebr., to points in Indiana, Michigan, Ohio, West Virginia, Pennsylvania, New York, Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, Delaware, Virginia, and the District of Columbia. There are no joint rates in effect from Omaha to the destinations named, the rates being made by combination either upon the Mississippi River or Chicago. The complainant alleges that the through rates so constructed are unreasonable in and of themselves and relatively as compared with the rates on other perishable property transported under like conditions. The Commission is asked to condemn the existing rates and establish through routes and joint rates from Omaha to the various points of destination.

The defendants answer generally, denying that the rates against which the complaint is directed are unreasonable or otherwise in violation of law, and resist the demand for the institution of joint rates.

Intervening petitions are filed by the National Creamery Butter Makers' Association and the Chicago Butter & Egg Board in opposition to the relief sought by the complainant, it being alleged that to grant the demand for lower carload rates than are at present in effect would injure the dealers in less-than-carload lots and work only to the advantage of the large carload shippers.

As previously stated, the rates on butter, eggs, and poultry from Omaha to points reached by the several defendants east of the Indiana-Illinois state line are made in combination upon the Mississippi River or Chicago. It happens that the combination upon the Mississippi River often yields the same through charge as the combination upon Chicago, but this is not invariably the case. Whenever a difference appears the lower combination governs.

The rates from Omaha to the Mississippi River are commodity rates and vary to some extent with the ultimate destination of the traffic. The rates from Omaha to Chicago are class rates applying on both local and through traffic. Under the Western Classification butter and eggs, in less-than-carload lots, take second class rates, while dressed poultry is placed in the first class. All three commodities in straight or mixed carloads take third class rates. The rates from Mississippi River crossings and Chicago to eastern points are any-quantity class rates, effective on both through and local business. The Official Classification, which governs this traffic, provides the second class rating for butter and eggs, while dressed poultry moves under first class rates.

It should be noted further that the any-quantity rates of the carriers in Official Classification territory include the expense of icing, whereas the carload rates from Omaha to the Mississippi River and

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Chicago are exclusive of icing. On less-than-carload shipments the western carriers bear the cost of refrigeration. Constructed as above indicated, the through rates from Omaha to representative points covered by the complaint are as follows:

Statement showing through rates on poultry, butter, and eggs from Omaha to representative points.

To—	Poultry (dressed).		Butter and eggs.	
	Carload.	Less than carload.	Carload.	Less than carload.
Indianapolis, Ind.	\$0.72	\$0.97	\$0.67	\$0.77
Pittsburg, Pa. ....	.90	1.16½	.84	.94
Syracuse, N. Y.	1.05	1.33½	.97	1.09
Philadelphia, Pa.	1.18	1.45½	1.08	1.19
New York, N. Y.	1.20	1.47½	1.10	1.21
Boston, Mass.	1.27	1.54½	1.16	1.27

The following table illustrates in detail the construction of the rates, the various factors in the combination upon the Mississippi River and Chicago being given in each instance:

Statement showing division of rates on poultry, butter, and eggs from Omaha to various points.

To—	Divisions.	Poultry (dressed).		Butter and eggs.	
		Carload.	Less than carload.	Carload.	Less than carload.
Indianapolis, Ind.	Mississippi River.	<i>Cents.</i> 35	<i>Cents.</i> 60	<i>Cents.</i> 35	<i>Cents.</i> 45
	Beyond.	37	37	32	32
	Total.	72	97	67	77
Do.	Chicago, Ill.	45	80	45	65
	Beyond.	31½	31½	27	27
	Total.	76½	111½	72	92
Pittsburg, Pa.	Mississippi River.	33½	60	35	45
	Beyond.	56½	56½	49	49
	Total.	90	116½	84	94
Do.	Chicago, Ill.	45	80	45	65
	Beyond.	45	45	39	39
	Total.	90	125	84	104
Syracuse, N. Y.	Mississippi River.	32½	60	34	45
	Beyond.	73½	73½	64	64
	Total.	106	133½	98	109
Do.	Chicago, Ill.	45	80	45	65
	Beyond.	60	60	52	52
	Total.	105	140	97	117
Philadelphia, Pa.	Mississippi River.	32½	60	34	45
	Beyond.	85½	85½	74	74
	Total.	118	145½	108	119
Do.	Chicago, Ill.	45	80	45	65
	Beyond.	73	73	63	63
	Total.	118	153	108	128

Statement showing division of rates on poultry, butter, and eggs from Omaha to various points—Continued.

To—	Divisions.	Poultry (dressed).		Butter and eggs.	
		Carload.	Less than carload.	Carload.	Less than carload.
New York, N. Y.....	Mississippi River.....	<i>Cents.</i> 32½	<i>Cents.</i> 60	<i>Cents.</i> 34	<i>Cents.</i> 45
	Beyond.....	87½	87½	76	76
	Total.....	120	147½	110	121
Do.....	Chicago, Ill.....	45	80	45	66
	Beyond.....	76	76	66	66
	Total.....	120	156	110	129
Boston, Mass.....	Mississippi River.....	32½	60	34	45
	Beyond.....	94½	94½	82	82
	Total.....	127	154½	116	127
Do.....	Chicago, Ill.....	45	80	45	66
	Beyond.....	82	82	71	71
	Total.....	127	162	116	126

The complainant does not undertake to establish the unreasonableness of any specific rate covered by the petition, nor are the factors comprising the through rates subjected to individual attack; the propriety of the entire existing rate structure is called in question. As representative of the rates in issue we may take those applying on butter and eggs from Omaha to New York, viz, \$1.10 per 100 pounds in carloads and \$1.21 per 100 pounds in less-than-carload quantities. It will be observed, by reference to the foregoing table, that the \$1.10 rate is made either in combination upon the Mississippi River or Chicago, while the \$1.21 rate is the result of the Chicago combination. The difference between the two rates lies entirely with the western factors.

The complainant's case rests primarily upon the following grounds:

First. That the expense to which the carriers are subjected in transporting less-than-carload business is greatly in excess of the cost of carrying carload business; accordingly, if the existing rates yield a sufficient return for the movement of less-than-carload freight, lower rates should be made effective on carload traffic.

Second. That the present rates, being made up of the combination of intermediate local rates, are unreasonable by virtue of that fact.

Third. That the rates on butter, eggs, and poultry are materially higher than the rates on other perishable products, such as fresh meats, fruit, and vegetables.

The evidence offered in support of the initial contention is carefully prepared, covering claims, loading, refrigeration, transfer from car to car, unloading, delivery, and accounting. There can be no question that more claims relatively arise from the transportation

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of less-than-carload business than from carload freight. It is also true that the cost of loading and unloading less-than-carload freight is borne by the carrier, while the duty of loading and unloading carload freight rests upon the shipper. The carload shipper is charged with the expense of refrigeration from Omaha to the Mississippi River or Chicago, while less-than-carload shipments are refrigerated at the carrier's expense. Again, the transfer of less-than-carload business at Chicago is an item of no small moment. Shipments must be unloaded at the freight house, transferred either through the tunnel or by dray to the freight house of the eastern carrier, and reloaded. A solid carload of through freight, on the other hand, is shifted by the belt railroad from the western to the eastern line at an expense which is certainly not as great as that incurred by transferring the same quantity of less-than-carload traffic in the manner outlined.

All these facts must be conceded. That the carriers are under greater expense in taking care of less-than-carload freight than in moving carload traffic has repeatedly been recognized by the Commission, but are we necessarily led thereby to find that the any-quantity rate works an injustice to the carload shipper? The admitted difference in the cost of service is entirely consistent with the conclusion that the existing rates are liberal as far as less-than-carload freight is concerned and no more than a reasonable charge upon carload traffic. If, for the reasons just considered, the Commission should order lower rates established on carload business, and the carriers should put them into effect as any-quantity rates in conformity with the petitioner's suggestion, this same line of attack could be followed in order to demonstrate anew the alleged excessive character of the charge as applied to carload traffic. In short, if the complainant's position is tenable, it would seem that we must eventually condemn the any-quantity rate as such.

The any-quantity rate rests upon sound public policy. It enables the small shipper to compete on fairly equal terms with his powerful competitor, thereby counteracting in a measure the prevalent tendency toward monopoly. While the Commission has consistently sustained the legality of a differential between carload and less-than-carload rates upon the ground that the difference in the cost of service justifies a reasonable difference in charge, it is highly significant that no order has ever been issued requiring that an any-quantity basis be superseded. *Brownell v. C. & C. M. R. R. Co.*, 5 I. C. C. Rep., 638; *Kindel v. B. & A. R. R. Co.*, 11 I. C. C. Rep., 495, 506; *Weil v. P. R. R. Co.*, 11 I. C. C. Rep., 627; *Duncan & Co. v. N. C. & St. L. R. R. Co.*, 16 I. C. C. Rep., 590. As previously noted, there is at the present time a difference between the carload and less-than-carload rates on dairy products from Omaha to the Mississippi River and

Chicago, and to this extent the carload shipper has an advantage over the smaller operators. Upon this record we would not be justified in accentuating that advantage by lowering the eastern factors as applied to carload traffic or establishing joint through carload rates on a lower level than the present combination.

The second ground upon which the complainant's case is predicated has been considered by the Commission in several cases of the first importance. It is self-evident that the carriage of through traffic is less expensive than the movement of local business, and this fact has served in part as a basis for lowering through rates which were made up of the combination upon intermediate points. In no case, however, has this been the sole ground for action, and we have expressly recognized the possibility that the factors comprising a through rate may be so low in themselves as to yield a reasonable through charge. *Kindel v. N. Y., N. H. & H. R. R. Co.*, 15 I. C. C., Rep., 555, 558. This element alone, without support of any substantial character, would not afford sufficient reason for a reduction in rates.

The complainant cites the rates on fresh meats from Omaha to eastern points in support of its contention that rates on dairy products are unreasonable. For some time past Omaha packers have enjoyed a rate of 63½ cents per 100 pounds for the transportation of fresh meat to New York, but more recently an advance to 68½ cents has been effected. The contrast between this rate and that applying on butter and eggs is a striking one, but, remembering the history of the rate, we would scarcely be warranted in using it as a criterion by which to determine the reasonableness of rates on other perishable products. Moreover, it must be remembered that fresh meats move from the Missouri River in enormous volume; the record shows that during the year 1909 approximately 29,000 carloads of packing-house products were shipped from Omaha to the east, while the total movement of butter, eggs, and poultry was 790 carloads. In view of all the circumstances we are not persuaded that the rate on fresh meats can be fairly used as a standard of reasonableness.

Such perishable products, as fruits and vegetables, likewise afford no proper comparison with the traffic under consideration for they differ from dairy products so materially in character and value, as well as in the conditions under which they are transported. A comparison, however, between rates on butter, eggs, and poultry throughout the country generally, especially in sections where the traffic conditions are essentially similar, is of recognized evidentiary value. If such a comparison is undertaken it will appear that nowhere in the United States are there lower rates on butter, eggs, and poultry than are now in effect from Omaha to points in Central Freight Association and Atlantic Seaboard territory. The complainant points out that

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these rates have been maintained at their present level for over twenty years, while the volume of traffic has greatly increased, rising from approximately 126 carloads in 1900 to 790 carloads in 1909; but we can not agree that this shows the rates to be excessive.

Regarding the present rate structure as an entirety, we can not find that the rates complained of are unlawful. In view of this conclusion it is perhaps unnecessary to consider separately the prayer for the institution of through routes and joint rates. The testimony of the complainant's witnesses is uniformly to the effect that the service at present accorded them is a through service and in every respect satisfactory. The complaint is confined to the rates themselves, and, inasmuch as the present through rates are not found excessive, the petitioner would gain nothing through an order requiring only a change in the form of stating the rates.

The complaint will be dismissed.

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No. 3475.

NELSON D. STILWELL

v.

LEHIGH & HUDSON RIVER RAILWAY COMPANY ET AL.

Submitted September 17, 1910. Decided October 4, 1910.

Tariff of initial carrier naming advanced rate did not properly cancel lower rate named in tariff of another carrier to which rate initial carrier was a party. Reparation awarded.

Nelson D. Stilwell for complainant in person.

John J. Beattie for Lehigh & Hudson River Railway Company.

R. H. Wallace and *H. A. Taylor* for Erie Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

On July 1, 1910, complainant purchased from defendant, Lehigh & Hudson River Railway Company, a monthly 60-trip commutation book for passage between Warwick, N. Y., and New York City, the transportation being via Jersey City, N. J., over the lines of defendants. For this book he paid \$18.30, which charge he alleges was unreasonable and unjust to the extent that it exceeded \$13.60, the rate formerly published in tariff of the Lehigh & Hudson River Railway and in effect at that time in tariff of the Erie Railroad to which the Lehigh & Hudson River Railway was a party. Reparation is asked in the sum of \$4.70.

Both defendants admit the material allegations of the complaint and are willing to make the reparation claimed, but they deny that the rate actually collected was unreasonable unless it be on account of conflict in tariffs.

For several years prior to June 26, 1910, defendants published in their separate tariffs a rate of \$13.60 for a 60-trip commutation book between the points in question, the tariff of each carrier being concurred in by the other. Effective June 26, 1910, the Erie Railroad published a tariff raising the rate to \$18.30. To this tariff the Lehigh & Hudson River Railway was a party. Effective June 28

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the Lehigh & Hudson River Railway published a tariff also raising the rate to \$18.30, and to this tariff the Erie was a party. However, at the suggestion of this Commission when it was considering the question of the advance in commutation rates in this territory, the Erie Railroad, prior to June 26, suspended the effective date of its tariff naming the increased rate until July 20, 1910. The Lehigh claims that it had no knowledge of this suspension on the part of the Erie and upon learning of the same issued, on July 5, effective July 7 under special permission, another tariff canceling its tariff naming the increased rate and reestablishing the old rate of \$13.60. The rate now in effect, published in tariffs of both carriers and respectively concurred in, is \$18.60. Therefore, during the interim, June 28 to July 7, 1910, the situation was as follows: Rate of \$13.60 in Erie tariff to which the Lehigh & Hudson River was a party; rate of \$18.30 in Lehigh & Hudson River tariff, to which the Erie was a party, and during this period, to wit, on July 1, 1910, complainant purchased his commutation book. The \$13.60 rate published in the Erie tariff has been in effect from November, 1908. The Commission has repeatedly held that a lawfully established rate remains in effect until specifically canceled. The tariff of the Lehigh & Hudson River Railway naming the \$18.60 rate did not cancel the rate of \$13.60 in the Erie tariff to which it was a party. This conflict in passenger tariffs comes within the Commission's administrative ruling No. 104 as follows:

Certain fares of a carrier had been published in a joint agent's tariff and also in its own tariff. The carrier issued a new tariff canceling the fares in its own tariff but did not secure their cancellation in the joint agent's tariff; *Held*, That the new tariff was unlawful because in conflict with the uncanceled tariff of the joint agent.

Our conclusions, therefore, are that the rate named in the Erie tariff and concurred in by the Lehigh & Hudson River Railway was not properly canceled by the issue of Lehigh & Hudson River Railway tariff naming the \$18.60 rate, and for that reason the rate lawfully applicable at the time complainant purchased his commutation book was \$13.60. Complainant is therefore entitled to reparation in the sum of \$4.70, with interest from July 1, 1910, and an order will be issued accordingly.

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No. 2177.
ALBERT PRESTON
v.
CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.

Submitted May 27, 1910. Decided October 4, 1910.

Under the circumstances disclosed by the record in this case, the Commission does not find that the maintenance of a higher rate from Rockhouse, Ky., to Brockwayville, Pa., than is contemporaneously maintained from Rockhouse to Buffalo and Salamanca, N. Y., was, at the time the shipments of cross-ties moved, in violation of the fourth section of the act; nor does it find that either the rate from Marrowbone, Ky., to Huntington, W. Va., or that from Rockhouse to Marrowbone, or that from Rockhouse to Brockwayville, on cross-ties, was unjust or unreasonable.

Noel W. Barksdale for complainant.

R. T. Wickham for Chesapeake & Ohio Railway Company.

Samuel M. Havens for Baltimore & Ohio Railroad Company and Buffalo, Rochester & Pittsburg Railway Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Rate of 20.5 cents per 100 pounds on oak cross-ties, carloads, from Rockhouse, Ky., to Brockwayville, Pa., and the factors thereof are in this proceeding challenged as unreasonable, unjust, unduly discriminatory, and in violation of section 4 of the act, and reparation is asked on 9 carloads shipped by complainant on dates between February 18 and April 30, 1907. Complaint was filed on February 24, 1909. Informal complaint was filed August 7, 1908.

It is contended that the rate from Rockhouse should not have exceeded the Marrowbone rate of 18.5 cents per 100 pounds, which was also applicable from Belcher and Elkhorn City, Ky., points on the main line of the Big Sandy division of the Chesapeake & Ohio Railway, respectively 5 and 7 miles distant from Marrowbone.

Rockhouse is on the Marrowbone branch of the Big Sandy division, Marrowbone being the junction point between said branch and the

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main line. Shipments in question moved via the Chesapeake & Ohio Railway from point of origin to Marrowbone, thence Baltimore & Ohio, and Buffalo, Rochester & Pittsburg railroads to destination.

The shipments were billed from Marrowbone, notwithstanding their origin at and movement from Rockhouse, and complainant contends that owing to this fact the Marrowbone rate was applicable. This contention is untenable and has no sanction under the law.

There was no joint through rate at the time the shipments moved, the total rate being constructed by combination of local rates of 2 cents Rockhouse to Marrowbone and 6 cents Marrowbone to Huntington, W. Va., and the joint rate of the Baltimore & Ohio and the Buffalo, Rochester & Pittsburg of 12.5 cents Huntington to Brockwayville, total 20.5 cents per 100 pounds.

Rockhouse is 4 miles distant from Marrowbone; from Marrowbone to Huntington the distance is 130 miles and from Huntington to Brockwayville is 419 miles, a total distance of 557 miles, producing a rate of approximately 7 mills per ton per mile for the entire haul. For the 4-mile haul to Marrowbone the rate was 2 cents per 100 pounds. The rate for the 130-mile haul, Marrowbone to Huntington, was 6 cents per 100 pounds, total 8 cents. The Chesapeake & Ohio joint rate Rockhouse to Huntington was also 8 cents. The rate, therefore, for the 4 miles Rockhouse to Marrowbone, was under either basis 2 cents. This rate was the separate rate and charge of the Chesapeake & Ohio Railway applied to through interstate transportation.

The distance tariff rate of defendant Chesapeake & Ohio Railway on forest products would be 12 cents per 100 pounds Rockhouse to Huntington. This was the lawful rate on oak lumber at the time these shipments moved, but the competition created by floating cross-ties on the Big Sandy River to Huntington compelled the establishment of a commodity rate of 6 cents per 100 pounds on ties Marrowbone to Huntington, to which was added the branch-line charge of 2 cents from Rockhouse. Witness for defendant Chesapeake & Ohio Railway testified that its rates on ties from branch-line points are ordinarily made 2 cents higher than from the main-line junction points, and this adjustment appears in the rates from points on the Gauley and Cabin Creek branches. Exceptions to the rule are Peach Orchard, on a branch connecting with the main line at Richardson, which takes the Richardson rate, and Northrup, on a spur 2 miles from Hammond on the main line, which takes the Hammond rate. In the first of these instances it is explained that originally Peach Orchard was on the main line, but the straightening of that line left Peach Orchard on a branch, and the main-line rate was not disturbed. In the case of Northrup the branch line is a mere spur track

2 miles in length. Belcher and Elkhorn City are on the main line of the Big Sandy division, and from the evidence adduced enjoy usual main-line service, while traffic from Rockhouse is handled by separate trains and crews and extra switching and handling are involved.

Complainant's further contention is that the combination through rate of 20.5 cents Rockhouse to Brockwayville is unjustly discriminatory and in violation of section 4 of the act because of a rate of 19 cents from Rockhouse to Buffalo and Salamanca, N. Y. It appears, however, that this 19-cent rate applied only from Marrowbone to Buffalo and Salamanca, the Rockhouse rate being 20 cents per 100 pounds. Effective July 27, 1907, these rates were reduced to 17 cents and 19 cents, respectively. Brockwayville, on the Buffalo, Rochester & Pittsburg Railway, is intermediate Rockhouse to Buffalo and Salamanca, but the tariffs in effect at the time did not authorize the application of the terminal rates to intermediate points. It appears, moreover, that Buffalo and Salamanca are terminal rate points between Central Freight Association and Trunk Line territory. It is alleged that they are in the zone of influence of the Buffalo rate and Lake rates, and that the rates thereto are induced by highly competitive conditions which do not exist at Brockwayville. Brockwayville, on the Buffalo, Rochester & Pittsburg Railway, is also intermediate Rockhouse to Rochester, N. Y., and from Huntington, W. Va., the Rochester rate 2.5 cents higher than the rate to Buffalo and Salamanca, is applied to all points between Butler and Rochester, including Brockwayville. Defendant showed that this relationship of rates, namely, the application of the so-called Central Freight Association basis of rates, to points on and west of a line through Butler, Pa., and Salamanca and Buffalo, N. Y., but not to points east thereof in the Trunk Line territory, has been long established and is well understood. Since this complaint was heard the fourth section of the act has been materially changed by the Congress, and this record affords no adequate foundation for a determination of this rate adjustment for this important territory.

Under the circumstances, we do not find that the maintenance of a higher rate from Rockhouse to Brockwayville than is contemporaneously maintained from Rockhouse to Buffalo and Salamanca was, at the time these shipments moved, in violation of the fourth section of the act nor do we find that either the rate of 6 cents per 100 pounds from Marrowbone to Huntington, the rate of 2 cents per 100 pounds from Rockhouse to Marrowbone, or the rate of 20.5 cents per 100 pounds charged by defendants on complainant's shipments of cross-ties from Rockhouse, Ky., to Brockwayville, Pa., was unjust or unreasonable.

The complaint will be dismissed.

No. 3126.

IN THE MATTER OF REDUCED RATES ON RETURNED SHIPMENTS.

Submitted July 11, 1910. Decided October 10, 1910.

1. Upon complaints in regard to proposed withdrawal by carriers of their special reduced rates on returned shipments, investigation was held by the Commission, but after due consideration the former conclusion of the Commission announced in section B, paragraph 67, of Tariff Circular 17-A is adhered to, which disapproved of the returned-shipment rates in general, but justified reduced rates for the return of freight which has been refused by the consignee at destination.
2. The principle underlying the ordinary transit privilege can not be relied upon in support of the returned-shipment rule. Transit arrangements, in their common form, are susceptible of defense only upon the theory that the inbound and outbound movements are in fact parts of a single continuous transaction; but there is no real connection between an outbound shipment to-day and a "returned shipment" one year hence.
3. The Commission does not feel justified in modifying the terms of its ruling to the effect that shipments refused at destination may be returned at reduced rates within 10 days. The ten-day limit does not seem to be inadequate.
4. It is axiomatic that rates depend largely upon value, and the Commission thinks that no objection could be raised against the establishment of special ratings for the movement of defective or damaged goods; but if this course is adopted the "returned" element should be altogether disregarded, the rating to be predicated entirely upon the low value of the freight.

Allan P. Matthew for the Commission.

Albert E. Clarke, D. F. Carmichael, and W. P. Trickett for the Minneapolis Traffic Association.

F. E. Kenaston for the Minneapolis Threshing Machine Company.

Joseph H. Beek for the St. Paul Jobbers' & Manufacturers' Association.

C. W. Dickinson for Jobbers' & Manufacturers' Association of La Crosse, La Crosse Board of Trade, and La Crosse Plow Company.

Frank A. Larish and Herman Mueller for the Western Freight Traffic Association.

Samuel D. Snow and Edgar A. Bancroft for the International Harvester Company of America.

J. H. Johnston for the Oklahoma Traffic Association.

Richmond D. Moot for the General Electric Company.

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W. J. Evans, C. E. Sanders, E. W. McCullough, and Bulkeley, Gray & More for the National Association of Agricultural Implement & Vehicle Manufacturers, The National Plow Association, and the National Wagon Manufacturers' Association.

REPORT OF THE COMMISSION.

LANE, Commissioner:

For some years the Western Classification has made provision for the application of reduced rates to returned shipments of agricultural implements, vehicles, and some twenty additional commodities. The items covering returned shipments are set forth in Western Classification No. 47, I. C. C. No. 5, effective November 1, 1909, as follows:

Agricultural implements, and parts thereof, returned to factory making them or original point of shipment, provided same are accompanied by an order from the original shipper or manufacturer authorizing the return of the goods and name and address of consignor plainly shown on billing, will be charged half tariff rates; otherwise full tariff rates will be charged. All charges to be prepaid.

Vehicles, and parts thereof (except self-propelling vehicles), returned to factory making them or original point of shipment, provided same are accompanied by an order from original shipper or manufacturer authorizing the return of the goods and name and address of consignor plainly shown on billing, will be charged half tariff rates; otherwise full tariff rates will be charged. All charges to be prepaid (exception to Rule 18).

Windmills and parts thereof, returned to factory making them or original point of shipment, provided same are accompanied by an order from the original shipper or manufacturer authorizing the return of the goods and name and address of consignor plainly shown on billing, will be charged half tariff rates, otherwise full tariff rates will be charged. All charges to be prepaid.

Cartridge shells (for small arms only):

	Class.
Metallic, returned in boxes, barrels, or casks.....	4
Paper, empty, returned in boxes.....	3
Photonegatives, old, returned boxed, minimum carload weight 30,000 pounds....	4
In carloads.....	5
Typewriters, old, returned direct to manufacturer on his order, in lots of 1,000 pounds or over, boxed.....	1
Iron mill rollers, old, returned.....	4
Printer's rollers, old, returned in boxes, crates, or bundles.....	4
Roller cores, printer's, returned in packages.....	4
Type, old, returned to manufacturers.....	4
Armature cores, returned for rewinding.....	4
Talking machine and parts, records, broken, returned in sacks.....	2
Petroleum and its products, as described in item 6, page 119, not unloaded and returned in original tank to original shipping point, one-half third-class rate, based on the gallons in the car, at estimated weights provided for in the classification, the total charge not to exceed one-half the charge based on carload rate and minimum weight.	
Billiard tables, slates, and slabs, boxed or crated, returned to manufacturers for repairs, one-half tariff rates.	
Beer, spoiled, in wood, returned to brewers, at estimated weights provided for ar, one-half fourth class.	

	Class.
Plates, electrotpe, old, returned to manufacturers.....	4
Plates, stereotype, old, returned to manufacturers.....	4
Cash registers, old, returned direct to manufacturer on his order, in lots of 1,000 pounds or over, boxed.....	1
Electric-light bulbs or lamps, burned out, returned to manufacturers.....	1
Books, school (second-hand), returned P. P. or guaranteed.....	2
Paper, damaged, in crates, returned to paper manufacturers.....	4

Items covering returned empty carriers have been omitted because not involved in this proceeding.

It will be observed that the basis fixed for the assessment of charges for the return of agricultural implements, vehicles, windmills, and billiard tables is one-half tariff rates, while in the case of the remaining commodities the reduction is effected by establishing a lower class rating than applies on original shipments.

These provisions of the classification, however, do not represent by any means the extent of the returned-shipment privilege. By exceptions to the classification the western carriers, notably the Western Trunk Lines and Southwestern Lines, have put into effect rules which permit the return movement of freight of virtually every character at one-half tariff rates. Western Trunk Line Circular No. 1-D, I. C. C. No. A-112, effective May 1, 1910, contains the following rules for the assessment of charges on returned shipments:

Shipments returned.—Shipments, whole or in part (except live stock, petroleum oil and its products in tank cars, and except as otherwise provided for on empty carriers returned), returned to the original shipper at original point of shipment, subject to the following conditions. One-half of the rate applying in the direction of the first movement. (See Exception.)

When via ² A. T. & S. F. Ry.....	When returned for repairs, or account of being unsalable.
When via ² C. B. & Q. R. R.....	
When via ² C. G. W. R. R.....	
When via ² C. P. & St. L. Ry.....	
When via ² Ia. & St. L. Ry.....	
When via Mo. Pac. Ry.....	
When via M. St. P. & S. S. M. Ry. (Chgo. Div.)	When for any reason.
When via ² Q. O. & K. C. R. R..	
When via C. & A. R. R.....	
When via L. M. C. F. T. Co.....	
When via Wis. & Mich. Ry.....	When returned for repairs, or account of being refused or unsalable.
When via C. R. I. & P. Ry.....	
When via D. M. & N. Ry.....	
When via D. R. L. & W. Ry.....	
When via ² A. T. & S. F. Ry.....	When returned to original point of shipment or to manufacturers or to branch houses for repairs or account of being refused.
When via ² C. & N. W. Ry.....	
When via ² C. B. & Q. R. R.....	
When via ² C. St. P. M. & O. Ry.	
When via ² E. J. & E. Ry.....	
When via ² Ia. & St. L. Ry.....	
When via ² Q. O. & K. C. R. R..	

When via C. M. & St. P. Ry.....	{ When returned to original point of shipment or to manufacturers or to branch houses for repairs or account of being refused or on account of being unsalable.
When via ² A. & C. Ry.....	
When via ² Ill. Cent. R. R.....	{ When returned to original point of shipment, or to manufacturers or branch houses, for any reason.
When via ² Iowa Cent. Ry.....	
When via ² M. & St. L. R. R.....	
When via ² M. N. & S. Ry.....	
When via ² T. P. & W. Ry.....	{ When returned for repairs, or account of being refused.
When via ² other lines parties to circular.....	

¹ Waybills covering return movement should carry reference to original outbound shipments, showing waybill reference, name of shipper, and point from which such shipment was made, and freight charges for return movement, if not prepaid, must be guaranteed.

Minimum charge on carload shipments to be one-half of Class D, and on less-than-carload shipments the same minimum charge as governed in the direction of the first movement, and Rule 17 of Western Classification will apply on shipments loaded on open cars.

Exception.—When but part of a carload shipment is returned, one-half of the less-than-carload rate in the direction of the first movement will apply.

¹ Via A. & C. Ry., A., T. & S. F. Ry., C. & A. R. R., C. & N. W. Ry., C., B. & Q. R. R., C. G. W. Ry., C., M. & St. P. Ry., C., R. I. & P. Ry., C., St. P., M. & O. Ry., D. & I. R. R. R., E., J. & E. Ry., Ill. Cent. R. R., Iowa & St. L. Ry., Iowa Cent. Ry., M. & St. L. R. R., M., N. & S. Ry., Q., O. & K. C. R. R., Wabash R. R., or M., St. P. & S. S. M. Ry. (Chicago Div.), reference on waybills to original outbound shipments will not be required.

² When via the A. & C. Ry., A., T. & S. F. Ry., C. & N. W. Ry., C., B. & Q. R. R., C. G. W. R. R., C., P. & St. L. Ry., C., St. P., M. & O. Ry., E., J. & E. Ry., Ill. Cent. R. R., Iowa & St. L. Ry., Iowa Cent. Ry., M. & St. L. R. R., M., N. & S. R. R., Q., O. & K. C. R. R., or T., P. & W. R. R., this rule will apply on freight returned for the reasons above specified, regardless of whether the initial shipment at full tariff rates was made over the A. & C. Ry., A., T. & S. F. Ry., C. & N. W. Ry., C., B. & Q. R. R., C. G. W. R. R., C., P. & St. L. Ry., C., St. P., M. & O. Ry., E., J. & E. Ry., Ill. Cent. R. R., Iowa & St. L. Ry., Iowa Cent. Ry., M. & St. L. R. R., M., N. & S. R. R., Q., O. & K. C. R. R., or T., P. & W. Ry., or over another railway company's line.

The rules as carried in Southwestern Lines Circular No. 3-C, I. C. C. No. 707, applicable on traffic to and from Oklahoma, effective May 11, 1910, are as follows:

Shipments, whole or in part (except as noted below), may be returned to shipper at point of origin in the states of Kansas, Nebraska, Missouri, Iowa, Minnesota, Illinois, Texas, Wisconsin, and South Dakota; also to New Orleans, La., Vicksburg and Natchez, Miss., Bessemer, Birmingham, and Ensley, Ala., El Reno, Enid, and Oklahoma City, Okla., Memphis, Tenn.; also to Hammond, Whiting, and Grasselli, Ind., and points in Louisiana west of New Orleans (or to other points in the states as described), at one-half the authorized rate, it being understood that if the returned shipment is of less-than-carload quantity one-half the less-than-carload rate will apply, but in no case must the charges be less than upon an original shipment as provided under minimum charge, Item No. 52, or reissue. If a carload is returned, one-half the carload rate will govern, provided the minimum rate on a full carload returned shall not

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be less than one-half of Class D, but not to exceed rate paid on original shipments, and provided further, that full reference be furnished by shipper or consignee to the original shipment, which information may be furnished at point of shipment or at destination of returned freight.

The basis as above provided for will also be applied as proportional rates to Mississippi River crossings on shipments returned to points in other states not shown.

NOTE.—The basis referred to above will be one-half of the standard rate applicable on traffic when forwarded new, in the direction of the returned shipment.

On returned shipments of agricultural implements, parts of agricultural implements, windmills, vehicles, machinery, engines, stoves and stove furniture, full prepayment will be required, unless written order of consignee instructing that property be returned at his expense is presented to agent at time of shipment.

The time limit for return shipment to be one year, except that there shall be no limit covering return of articles taking agricultural implement, vehicle, and wagon rates.

Waybill should carry notation that the shipments are returned shipments with reference to this item in the authority column of the waybill.

NOTE.—For rating on empty carriers returned, see Item No. 123, or reissue.

EXCEPTIONS.

Above will not apply on live animals, billiard and pool tables, merry-go-rounds, shooting gallery outfits, household goods, emigrant outfit, graders' outfit, bridge builders' outfit, campers' outfit, or on telegraph and telephone camp outfits.

It will be noted that the basis taken for the assessment of charges in the Western Trunk Line circular is one-half the rate applying in the direction of the first movement, while the standard fixed in the Southwestern Lines circular is one-half the rate applying in the direction of the returned shipment.

The Official and Southern Classifications formerly permitted the return movement of freight at reduced rates to some extent, but no provision of this character is included in recent issues.

On June 14, 1909, the Commission adopted the following ruling, subsequently incorporated in paragraph 67 of Tariff Circular 17-A:

A rule providing for the reconsignment or return free or at reduced rates of articles damaged in transit is not improper if it is so framed and applied as to prevent abuses or improper practices under it. The practice of returning at reduced rates articles that have been delivered into the possession of consignees and have become shop-worn or have gotten into a state of disrepair through use is neither proper nor free from unjust discrimination. A rule according reduced rates on return shipments is proper only in so far as it applies to the return of shipments that are received by the consignee in bad order or are refused by consignee without examination. As to shipments that are not in closed packages and thus are open to immediate inspection, the rule should provide that in order to secure reduced rates on return movement the goods shall not have left the possession of the carrier before such claim is made. As to goods that are in closed packages, the rule should provide that in order to secure reduced rates on return movement such goods must be returned to the carrier within ten days.

Following this ruling the Western Classification Committee decided to abrogate the returned-shipment privilege, a decision which was 19 I. C. C. Rep.

carried into effect by the publication of Western Classification No. 48, I. C. C. No. 6, effective May 1, 1910. All provisions permitting the return of freight at reduced rates were canceled with the exception of those applying to empty carriers and petroleum oil and its products in original tank cars. This action, coupled with threatened action of similar character on the part of the Western Trunk Lines, led to a vigorous protest by shipping interests, particularly in the middle west, and at their instance this inquiry into the legality of reduced rates on returned shipments was instituted.

The returned-shipment privilege seems to have been originated for the purpose of assisting the agricultural interests. Farm implements and machinery often prove defective or break down while in use, and if full tariff rates must be paid for their transportation to a point where repairs can be effected, the farmer is subjected to a serious handicap. Rules were therefore adopted permitting the return of agricultural implements, vehicles, and similar articles at one-half the regular rates.

Through the operation of competitive forces the return-shipment rules became increasingly liberal and were gradually enlarged to cover the return of freight of every character and for every purpose. By reference to the provisions of the Western Trunk Line circular quoted above it will be observed that, while the rules of the various carriers are not uniform, the general effect is to permit the return of freight to the original point of shipment or to branch houses of manufacturers at one-half the rates applying in the direction of first movement. No time limit is provided, reference to original outbound shipments is not always required, nor is it essential that the return movement be made via the line over which the initial shipment was carried. The Southwestern Lines circular, on the other hand, requires that the returned shipment be made within a year following the outbound movement in order to enjoy the lower rate, but this limitation does not apply to agricultural implements, vehicles, and wagons. Other circulars of the southwestern lines carrying similar rules establish a four-year limit for the return of agricultural implements and vehicles.

The record shows that while returned shipments form but a small proportion of the carriers' entire traffic the privilege is of importance to several branches of industry. Wagon makers protect their purchasers with agreements of warranty which provide that any parts which prove defective within twelve months from the date of sale shall be replaced. Any such defective vehicles or parts thereof are ordinarily returned to the factory and, under the conditions heretofore obtaining, at one-half the regular tariff rates. This same practice seems to be followed by manufacturers of agricultural implements. Manufacturers of threshing machinery and portable engines

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receive old machines and engines from customers in partial exchange for new ones, returning the old stock to the factory either to be reconstructed and sold for what it will bring or perhaps to be scrapped. Jobbers of dry goods sometimes find it necessary to relieve their customers of an oversupply, a given consignment of goods having proved unsaleable because of unseasonable weather or through some other unexpected cause. Similarly grocery stock which has remained in the hands of the retail dealer until it has deteriorated in quality or appearance is returned to the wholesaler for such use as the latter can make of it. This enumeration is not exhaustive, but it sufficiently illustrates the commercial importance which the returned-shipment traffic has attained.

The testimony taken at the hearing seems to indicate that the proper policing of the returned-shipment privilege is a problem of some difficulty. The witnesses generally agreed that almost any practice could be followed under the rules of the Western Trunk Line circular. A dealer in threshing machines frankly stated that it had been his custom to secure half rates for the movement of old machinery without regard to the point of original shipment. Evidence of similar purport was given by a representative of a billiard-table manufacturer. In addition to this, a number of claims were introduced in evidence tending to show that in many cases it is impossible to determine with certainty whether a given consignment which is offered as a returned shipment is such in fact. The difficulty is enhanced by the extension of the privilege to shipments moving to branch houses of manufacturers. A traffic manager of one of the leading railroads testified that under the prevailing practice a shipment moving from Chicago to Omaha could with propriety be "returned" subsequently from Omaha to St. Paul at one-half tariff rates.

The possible abuse of the returned-shipment privilege is, however, a secondary problem in this connection; the fundamental issue is the legality of reduced rates on returned shipments as such. Section 2 of the act provides as follows:

That if any common carrier subject to the provisions of this act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Under the accepted interpretation of this section a carrier subject to the act is forbidden to make a difference in charge for services rendered contemporaneously and under like conditions of carriage.

Does the transportation of a given consignment of machinery or dry goods from the Missouri River to Chicago differ in any respect from the transportation of another lot of similar freight between the same points solely by reason of the fact that it had previously been shipped from Chicago to the Missouri River? The question carries its own answer—it is obvious that the circumstances and conditions attending the two shipments are identical, and yet this fact of prior movement is presented most earnestly as a differentiating circumstance by those who seek to defend the returned-shipment rule. As one of the witnesses expressed it, "The justification to some extent for this reduced rate on the return is that it is a return movement, that it has previously paid the full tariff rates." If the fact that a consignment of goods has once been shipped at full tariff rates is entitled to consideration in connection with the fixing of rates for a subsequent movement, why should there be any limitation upon the direction of the new movement? The carrier should be ready to apply half rates to the second shipment, whether or not it is in the direction of first movement.

Irrespective of any practical weight which may attach to this contention, it is obvious that it is without legal merit. This Commission has already held that the fact that freight has been shipped once and paid one rate can not be taken into consideration in fixing charges for a subsequent transaction. In the case of *James & Abbott v. E. T., V. & G. Ry. Co.*, 3 I. C. C. Rep., 225, the defendants sought to justify a higher rate on lumber from Johnson City, Tenn., to Boston, Mass., than was applicable from Atlanta, Ga., a more distant point, upon the ground that "lumber shipped from Atlanta is first carried there by railroad and has paid a local rate from the mills. * * *" This defense was rejected by the Commission in the following terms:

The origin of the goods or the fact that lumber comes to their roads from the mill or over some other railroad or over a wagon road is not an element which enters into the question of what they may reasonably demand for the transportation services they are to render. This equitable rule is not altered in the case under consideration by the statement of the traffic manager of one of the defendant companies who, as a witness, said: "We have already brought that lumber from the local cities to Atlanta." When freight is taken up at Macon or elsewhere and delivered at Atlanta for sale or other purpose not incident and necessary to through transportation, the shipment is complete, and when such freight is forwarded the carriage from Atlanta is a new undertaking. The character of a local shipment between the cities or between the mills and cities of Georgia is the same when made by the defendants or some one of them as if made by some other railroad company, and whether made by one or the other, it can not legally have the effect of raising or lowering the charges for transportation of the freight when re shipped.

"This decision would seem to be conclusive of the question now considered. See also *A. & V. Ry. Co. v. Mississippi Railroad*
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Commission, 203 U. S., 496; *Cannon Falls Farmers' Elevator Co. v. O. G. W. Ry. Co.*, 10 I. C. C. Rep., 650; *Bigbee Packet Co. v. M. & O. R. R. Co.*, 60 Fed. Rep., 545.

The principle underlying the ordinary transit privilege can not be relied upon in support of the returned-shipment rule. Transit arrangements, in their most common form at least, are susceptible of defense only upon the theory that the inbound and outbound movements are in fact parts of a single continuous transaction. While the freight is delayed at the transit point the shipment is merely suspended temporarily, the present intention of the shipper being to forward the goods to their ultimate destination. Once let it be conceded that the inbound and outbound movements are separate and distinct and the impropriety of applying any rates other than the regularly established locals would be self-evident. *G., C. & S. F. Ry. Co. v. Texas*, 204 U. S., 403. It is clear that there is no real connection between an outbound shipment to-day and a "returned shipment" one year hence. There is no room whatever for the argument that the shipment is suspended during the period intervening between the two transactions, for there is no present intent to accomplish the return movement. It is therefore impossible to relate the two services and urge the one as a reason for granting special terms to the other.

Our conclusion that the character of the shipment is not differentiated in legal contemplation by the fact of prior movement compels us to adhere to the views announced in section B, paragraph 67, of Tariff Circular 17-A. It will be observed that this ruling is in strict accord with fundamental principle disapproving of returned-shipment rates in general but justifying reduced rates for the return of freight which has been refused by the consignee at destination. In the latter case the return movement is practically a continuation of the going movement, and may for that reason be accorded lower than standard rates. Perhaps a slight departure from legal theory is involved in the concession that goods in closed packages may lawfully enjoy returned-shipment rates if tendered to the carrier within ten days following delivery, but doubtless this addition is essential if the rule is to be thoroughly workable.

The Commission is asked to extend the period within which shipments refused at destination may be returned at reduced rates, it being urged that a ten-day limit is inadequate. We are not convinced, however, that such an extension is commercially necessary, and without a more conclusive showing than has thus far been made we do not feel justified in modifying the terms of the ruling.

Our finding against the legality of reduced rates on returned shipments does not finally dispose of the issues involved in this proceeding.

One of the chief arguments advanced in support of the returned-shipment rule is the fact that the return movement comprises almost entirely freight of very low value. It is plain that this contention does not go to the legality of the reduced rate on returned shipments, but it does have a distinct bearing upon the propriety of assessing full tariff rates on machinery, vehicles, groceries, and other freight in an obviously deteriorated condition. It is axiomatic that rates depend largely upon value; we think, therefore, that no objection could be raised against the establishment of special ratings for the movement of defective or damaged goods. If this course is adopted the "returned" element should be altogether disregarded, the rating to be predicated entirely upon the low value of the freight.

Such disposition of the problem in hand would, we firmly believe, meet the most pressing needs of commercial and industrial interests generally. It does not permit jobbers and manufacturers to secure the return of unsalable goods at one-half the regular tariff rates, but it is plain that such shipments do not constitute a different kind of traffic from original shipments of similar freight. Under the law there can be no justification for a special rating on unsalable goods, whether moving as a returned shipment or otherwise. The Commission will expect carriers to conform to the views herein announced.

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No. 3056.
COMMERCIAL CLUB OF OMAHA
v.
ANDERSON & SALINE RIVER RAILWAY COMPANY ET AL.

Submitted July 21, 1910. Decided October 10, 1910.

Petition for rehearing denied.

Robert Dunlap and T. J. Norton for Atchison, Topeka & Santa Fe Railway Company; Gulf, Colorado & Santa Fe Railway Company; and Texas & Gulf Railway Company.

W. F. Dickinson and Wallace T. Hughes for Chicago, Rock Island & Pacific Railway Company; Chicago, Rock Island & Gulf Railway Company; and Trinity & Brazos Valley Railway Company.

REPORT OF THE COMMISSION ON PETITION FOR REHEARING.

CLARK, Commissioner:

The Chicago, Rock Island & Pacific Railway and some of its allied lines, and the Atchison, Topeka & Santa Fe Railway and some of its allied lines, have petitioned for rehearing in this case, which was reported in 18 I. C. C. Rep., 532.

Prior to June 1, 1908, the rate on lumber from the southwest to Omaha, Nebr., was 23 cents per 100 pounds, and a higher rate was applied to Lincoln, Nebr. In *Lincoln Commercial Club v. C., R. I. & P. Ry. Co.*, 13 I. C. C. Rep., 319, the Commission ordered that the rate on lumber to Lincoln should not exceed the rate to Omaha. That order was complied with by raising the rate to Omaha.

Prior to September 1, 1908, the rate on lumber from the same territory to Des Moines, Iowa, was higher than to Omaha. In *The Greater Des Moines Committee v. O. G. W. Ry. Co.*, 14 I. C. C. Rep., 294, the Commission ordered that the rate to Des Moines should not exceed the rate to Omaha, and this order was complied with by again raising the rate to Omaha.

The instant case was based on a complaint against these increases in the rates to Omaha, and many carriers were made defendants that were not defendants in either the *Lincoln* or the *Des Moines* cases.

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The Greater Des Moines Committee intervened in the instant case petitioning that if any change was made in the Omaha rate a similar change be made in the Des Moines rate so that the relationship established and the principle laid down by the previous decisions, that the rate to Des Moines should not exceed the rate to Omaha, might be preserved. Copies of this petition for intervention were duly served upon and answered by both the Rock Island and Santa Fe companies.

The Rock Island Lines' petition alleges that various of its rates to Iowa and Nebraska points, made in combination on Council Bluffs or Des Moines, will be reduced as a result of the Commission's order, and it is alleged that rates to those points were not before the Commission under the complaint, and that the effect at those points has not been brought before or considered by the Commission.

The intervening petition, the testimony, the brief, and the argument on behalf of Des Moines went directly and solely to the proposition that the Des Moines rate should not be higher than the Omaha rate. None of the defendants seriously contested that point in the instant case. Ample opportunity for full hearing was given, and all of the testimony and argument tendered by these or other defendants was accepted and properly considered.

The statement in our original report to the effect that the rate per ton per mile on the traffic involved would be imperceptibly affected by the change which we thought should be made, refers solely to the rate per ton per mile and to the fact that the rates applied from a very large blanketed territory, and of necessity would vary with the points of origin.

Error is alleged on account of the suggestion in the original report that the defendants were apparently satisfied with the 23-cent rate to Omaha until it was no longer possible to maintain a higher rate to Lincoln, and apparently were satisfied with the 25-cent rate until it was impossible to longer continue a higher rate to Des Moines. This suggestion was based in the fact that the 23-cent rate to Omaha was voluntarily established and voluntarily maintained until it was raised under the Commission's order that the rate to Lincoln should not exceed the rate to Omaha. The 25-cent rate to Omaha thus established was maintained until it was again raised under the order that the rate to Des Moines should not exceed the rate to Omaha.

Error is alleged in finding that the average carload weight is from 50,000 to 55,000 pounds. There is testimony in the record to that effect, and there is testimony that the average weight is less. It is well known, and probably uncontradicted, that the average carload weight has been greatly increased in recent years.

On the subject of reparation petition for rehearing reasserts the position taken at the hearing and in argument, to wit, that the

complainants having bought and sold their lumber on the basis of the existing freight rate were not entitled to reparation because of the payment of the rate found to be unreasonable. If the rate was unreasonable the carriers had no right to charge it and have no right to the proceeds of such charges above a reasonable rate. The complainants are the ones who paid the unreasonable rate.

The petition for rehearing on account of the Santa Fe lines alleges error in granting the prayer of the Greater Des Moines Committee, intervener, and reaffirming the previous decision that the rate to Des Moines should not exceed the rate to Omaha. We repeat that copy of this intervening petition was served upon these defendants, was answered by them, testimony in support of it was offered, and opportunity for cross-examination was accorded. These defendants were duly and properly on notice and had full opportunity to be heard.

It is alleged that the opinion of the Commission was predicated upon the assumption that the rate in question had been or would be increased by progressive advances to the highest point under which the traffic would freely move. Neither the Commission's opinion as to the facts in this case nor its conclusion was predicated on that expression. In answer to certain arguments advanced we said:

They cite the rule laid down in *Interstate Commerce Commission v. C. G. W. Ry. Co.*, 209 U. S., 108, that "The mere fact that a rate has been raised carries with it no presumption that it was not rightfully done." We accept that theory as sound, *Memphis Cotton Oil Co. v. I. C. R. R. Co.*, 17 I. C. C. Rep., 313, but we are not, as at present advised, ready to accept the theory that rates may lawfully and reasonably be increased by progressive advances as long as the traffic moves freely and until the highest point under which the traffic will move freely is reached. Some traffic must move, and reasonably freely, up to the point where the rate becomes prohibitive.

These petitioners argue that the decision of the Commission will be of great financial detriment to their interests. No new facts are presented and no point is raised that was not previously considered, and no matter is referred to as to which these petitioners were not afforded ample and full opportunity to be heard.

The petition for rehearing will be denied.

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No. 3041.
SIKESTON MERCANTILE COMPANY
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted June 30, 1910. Decided October 10, 1910.

Complainant's allegation of misrouting not sustained. Complaint dismissed.

G. M. Stephen for complainant.

W. M. Johnson for Boston & Maine Railroad, Erie Railroad Company, and Chicago & Erie Railroad Company.

J. L. Howell for Terminal Railroad Association of St. Louis.

M. L. Clardy and *James C. Jeffery* for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

On February 3, 1909, there were shipped by the George E. Keith Company from North Adams, Mass., over the lines of defendants, through St. Louis, Mo., to complainant at Sikeston, Mo., three cases of shoes, weighing 180 pounds, upon which defendant the St. Louis, Iron Mountain & Southern Railway Company collected from complainant the sum of \$2.95, made up, as shown by its freight bill, of the following items: \$1.75 and 25 cents advance charges to St. Louis, and 95 cents freight charges from St. Louis to Sikeston, the latter being based on a rate of 53 cents per 100 pounds.

According to the tariffs on file with the Commission in effect at the time the rate from North Adams, Mass., to St. Louis, Mo., was 88 cents per 100 pounds, making the charge to that point \$1.58, or a total charge to Sikeston of \$2.53, resulting in a straight overcharge of 42 cents, which should be refunded by defendants without any order from this Commission.

The complainant, in its petition, claims that no routing instructions were given when the shipment was made, and that the shipment should have moved from East St. Louis, Ill., via the St. Louis, Iron Mountain & Southern Railway to Cairo and thence to Sikeston, over which

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route the rate would have been 90 cents per 100 pounds to Cairo and 81 cents from Cairo to Sikeston. On basis of this combination the charges would aggregate \$2.18, and complainant asks reparation in the sum of 77 cents on account of alleged misrouting. The bill of lading shows the shipment consigned by the George E. Keith Company to the Sikeston Mercantile Company, Sikeston, Mo., route "E. D. Mo. Pac." Notwithstanding the statement in the petition that no routing instructions were given, there was filed at the hearing an agreed statement of facts signed by the attorney for complainant and the attorney for the Boston & Maine Railroad that the shipping instructions routed the shipment via "E. D. Mo. Pac.," and that the shipment was waybilled by the Boston & Maine Railroad from North Adams to St. Louis consigned to the Sikeston Mercantile Company, Sikeston, Mo., "Mo. Pac." At the hearing there was filed as an exhibit an interline waybill of the Erie Dispatch covering the shipment from North Adams to St. Louis, Mo., showing the Sikeston Mercantile Company as consignee and Sikeston, Mo., as destination, route "Mo. Pac." It was admitted by complainant that "E. D." stood for Erie Dispatch and "Mo. Pac." for Missouri Pacific. Notwithstanding these records, complainant insisted that the shipment should have been made to East St. Louis and thence by the St. Louis, Iron Mountain & Southern Railway via Cairo to Sikeston at the lower tariff rate. Sikeston could have been reached not only through St. Louis, but also through East St. Louis, Thebes, and Cairo. The carriers followed the shipper's routing instructions and can not be held liable for misrouting. The complaint will be dismissed and an order will be issued accordingly.

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No. 2884.

OMAHA GRAIN EXCHANGE

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted May 13, 1910. Decided October 10, 1910.

Complaint alleges unreasonable rates on grain from parts of South Dakota, Minnesota, and Iowa to Omaha, Nebr., as compared with the rates from same points to other markets; the real and important question here is whether or not defendants shall be required to establish rates from the territory in question to Omaha on a basis of like rates for like distances as compared with their rates from same points to Minneapolis; *Held*, That the rates to Minneapolis are strongly influenced or controlled by competitive conditions which do not likewise affect the rates to Omaha. The interests of the Minneapolis lines which do not also reach Omaha, as well as the demands of the milling interests at Minneapolis, create conditions which, as to the rates and transportation to Minneapolis, are substantially dissimilar from those which apply to the rates and the transportation to Omaha.

E. J. McVann for complainant.

S. A. Lynde for Chicago & North Western Railway Company and Chicago, St. Paul, Minneapolis & Omaha Railway Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

Albert E. Clarke for Minneapolis Chamber of Commerce, intervenor.

W. P. Trickett for Minneapolis Traffic Association and Chamber of Commerce, interveners.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

This complaint attacks as "unjust, unreasonable, and excessive in and of themselves, as compared with the rates published, charged, and collected by said defendants for the transportation of grain from the same points of origin to other grain markets, under substantially similar circumstances and conditions," defendants' rates on grain from certain points on their respective lines in South Dakota, Minnesota, and Iowa to Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Complaint also alleges that as a result of the maintenance of said excessive rates, complainant's members are greatly injured in their business.

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In its brief, complainant states that no charge of discrimination is involved, that the only question is one of the reasonableness *per se* of the rates in question.

The rates complained of are stated to be those in C. & N. W. tariff, I. C. C. 6815; C. M. & St. P. tariff, I. C. C. A-9775; and C. St. P. M. & O. tariff, I. C. C. 3416. The territory involved is described as being all points in South Dakota lying between the Missouri River and the Minnesota state line, points in southwestern Minnesota on and south of the line of the Chicago & North Western Railway from Watertown, S. Dak., to Fox Lake, Minn., and points in northwestern Iowa on and west of the line of the Chicago, St. Paul, Minneapolis & Omaha Railway. This territory is very largely devoted to grain raising and it is served by a network of railroad lines belonging to the defendants and to the Great Northern, the Minneapolis, St. Paul & Sault Ste. Marie, the Minneapolis & St. Louis, and the Chicago, Rock Island & Pacific systems. The Great Northern, the Minneapolis & St. Louis and the Minneapolis, St. Paul & Sault Ste. Marie systems have lines to Minneapolis and none to Omaha, the Chicago, Rock Island & Pacific, the Chicago, Milwaukee & St. Paul and the Chicago, St. Paul, Minneapolis & Omaha systems have lines to both Minneapolis and Omaha. The Chicago & North Western has lines to Omaha but none to Minneapolis. These facts must be borne in mind in order to fully understand the questions at issue. It should also be understood that while the Chicago & North Western and the Chicago, St. Paul, Minneapolis & Omaha are separate legal entities, there is a very close community of interests in their ownership and operation.

The Chamber of Commerce of the city of Minneapolis and the Minneapolis Traffic Association intervened in this case in opposition to the contention of complainant.

Complaint alleges that the rate adjustment from the territory described is such that the grain dealers at Omaha are not able to secure a fair share of the grain originating in that territory. It appears that when grain buyers ship a car of grain to a grain firm they draw a draft for the price of same, upon which the firm to which the shipment is made and upon which the draft is drawn charges interest until the car is unloaded. Complainants therefore argue that the grain should go to the nearest market possible at the same price. The location of the point at which the grain is originally bought and the rates to the several primary markets determine generally where the grain shall be shipped.

As is well known, boards of trade or grain exchanges at the primary markets fix certain grades for those respective markets, and the great bulk of the grain at a market is bought and sold on the grades so fixed for it. In this case it is testified that the Omaha

grades on oats are easier than those at any other market, because light oats are graded higher than at other places. One of complainant's witnesses testified that in buying grain in the territory in question he found that he could do business where the difference in rates between Omaha and Chicago was as much as 6 cents per 100 pounds, which he figured to be about 2 cents per bushel, having reference especially to oats. Another witness testified that in buying barley: "We found that we were out of line with our prices that we had established for the Omaha market," and that, "We had a great deal of barley offered us in territory up north, in the northern part of South Dakota, which we could not purchase on our price." He also testified that he was able to buy for the Omaha market at points in South Dakota which carried a rate of 12 cents to Omaha as against 18 or 19 cents to Chicago. In general the rates from this territory to Chicago are based upon Minneapolis. On wheat the rate to Chicago is generally 7 or 7.5 cents higher than to Minneapolis, 7.5 cents being the proportional rate on transit grain from Minneapolis to Chicago. On coarse grains the combination on Minneapolis is not so closely adhered to. From many stations the rates on wheat and on coarse grains are the same, due, as testified by defendants' witness, to reductions in wheat rates from causes that did not affect coarse-grain rates. Another witness testified that the Minneapolis market paid a higher price for wheat than the Omaha market, and that the price for corn on the Chicago market was usually higher than at other western markets, but that on oats the market in Omaha was very good because of the large movement from Omaha to the south.

One of complainant's expert witnesses criticised the rate adjustment complained of on the ground that cross-country checking had not been closely adhered to in making the rates to Omaha as it had been in making the rates to Minneapolis and Chicago.

The Chicago, Milwaukee & St. Paul Railway has a line east and west through Woonsocket, S. Dak., which is probably something over 100 miles from the southern boundary of the state. Generally speaking, the points in question lying south of that line are nearer to Omaha than to Minneapolis. Upon that line the distances are approximately the same to Omaha and to Minneapolis, and, of course, north of that line the distances to Minneapolis are shorter than to Omaha. This case was tried not upon an alleged discrimination against Omaha as a market, but on the ground that the rates to Omaha were unreasonable in comparison with the rates to Minneapolis and Chicago.

Defendants construe the complaint to be one of discrimination against Omaha rather than that the rates to Omaha are unreasonable *per se*, and that the discrimination lies in the fact that the Omaha

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market is in competition with Minneapolis and Chicago markets, and that a relatively lower basis of rates from the territory in question to other markets works to the disadvantage of the Omaha market and the dealers there. Defendants argue that if competitive conditions compelled them to make a relatively lower basis of rates to Minneapolis and Chicago than to Omaha, the complaint is without merit. They contend that the fact that their rates to Minneapolis are relatively lower than to Omaha is not controlling, and does not require reduction in the rates to Omaha if the Minneapolis rates are largely forced upon them by competitive conditions which do not affect their rates to Omaha, and if the general conditions of transportation to other markets are dissimilar as compared with those affecting the transportation to Omaha.

It is contended by defendants and interveners that the rates on grain from the territory in question to Minneapolis are made and controlled by the Great Northern, the Minneapolis, St. Paul and Sault Ste. Marie, and the Minneapolis & St. Louis systems, which form the short lines from practically all points in that territory to Minneapolis, and which have no lines to Omaha. One of complainant's expert witnesses testified that the rates made by the Great Northern have a great bearing on defendants' rates to Minneapolis, that the long line has to meet the competition of the short line or go out of business, and that there are north and south lines running direct to Minneapolis which, to an extent, affect the rates made by cross-state lines which reach Minneapolis via connections with them. In general, where the distance to Minneapolis is less than to Omaha the rates to Minneapolis are the lower. There are some noncompetitive points where the short lines do not affect the rates, from which the rates are the same to Minneapolis and to Omaha, despite some differences in the distances. It is also true that in the southern part of South Dakota and Minnesota and in northern Iowa the rates generally are less to Minneapolis, considering actual distance, than they are to Omaha. It is stated by defendants that—

Considering the short lines as factors, all places in South Dakota are practically nearer Minneapolis than Omaha, regardless of the distance, on account of the short lines.

Complainant argues that at junction points of defendants and at cross-country competitive points their rates to Chicago and Minneapolis are carefully checked so as to preserve the relation between the Minneapolis, Chicago, and Milwaukee markets, but that the rates to Omaha bear no fixed relation to the rates to other markets. To this the defendants reply that at no point in South Dakota do their lines make the short line to Minneapolis, and that there is a compelling influence of competitive short-line rates which affects all of their rates

to Minneapolis, Chicago, and Milwaukee which does not exist as to their rates to Omaha.

Defendants present an exhibit (Johnson's Exhibit No. 1) in which a comparison is made between the rates to Minneapolis from stations on the Chicago & North Western, fixed by the short-line rates of other companies, taking the short-line distance, with the Omaha rates and Omaha distances, and on this basis, they state that—

A comparison of the mileages and the rates covering all this territory shows a basis of 3½ per cent lower on the North Western from South Dakota to Omaha than it is to Minneapolis.

Complainant disclaims the contention that it is the duty of the Commission to reduce defendants' rates simply to permit Omaha to secure business from the territory in question, and also disclaims any desire to have the Commission establish to Omaha rates that could apparently be made the basis for a claim of discrimination on the part of Minneapolis or other markets. Defendants' officers testify that they have received notification from officers of lines forming the short lines and making the rates from this territory to Minneapolis, that any reductions made in the Omaha rates will be met by similar reductions in the Minneapolis rates in order to protect the grain traffic of the short lines to Minneapolis. The interveners assert, having reference to the milling interests at Minneapolis and their need for raw material, that "as against Omaha, it is the demand, not any rate differentials, which takes wheat to Minneapolis." The record shows that from stations on the Chicago & North Western road in South Dakota the movement of grain to Minneapolis has been enormously greater than to Omaha during the past three years. It also shows that from stations in South Dakota where the rates to Minneapolis and Omaha were the same there was a much larger movement to Minneapolis than to Omaha.

The desire of the Omaha dealers is to have the grain shipped to Omaha not particularly for milling or consumption at that point, but for reshipment to eastern and southern points. Defendants call attention to the fact that the combination of rates which make up the through rates to the south and southeastern territory are substantially in favor of Omaha as compared with Minneapolis or with Chicago.

There is in the record (Eyman Exhibit No. 6) a map of the territory in question showing the location of the different railway lines (the Chicago & North Western and the Chicago, St. Paul, Minneapolis & Omaha lines being charted as one system) and the distances, respectively, to Omaha, Minneapolis, Chicago, and Duluth, together with the rates on wheat and on coarse grains to those markets, the accuracy of which has not, we believe, been questioned. That exhibit shows the following situation:

From Elk Point in the southeasterly corner of South Dakota, defendant Chicago, Milwaukee & St. Paul Railway has two lines diverging, the one running in a northerly direction through Sioux Falls, Madison, Elrod, and Andover, S. Dak., to Harlem, N. Dak., crossing the Great Northern at Brookland and the Soo Line at Cogswell, N. Dak. The other runs approximately 50 or 60 miles farther west in a northerly direction through Yankton, Mitchell, and Redfield, S. Dak., to Edgely, N. Dak., connecting with the Great Northern at Ellendale, with the Soo Line at Monango, and with the Northern Pacific at Edgely, N. Dak. These lines are intersected by east and west lines of the same defendant from Canton through Mitchell west to Chamberlain, 359 miles from Omaha and 464 miles from Minneapolis; from Pipestone, Minn., through Madison and Woonsocket, S. Dak., to Wessington Springs, S. Dak., 336 miles from Omaha and 409 miles from Minneapolis; and from Millbank, S. Dak., through Andover and Aberdeen, west to Mobridge, 519 miles from Omaha and 392 miles from Minneapolis.

Defendant, Chicago & North Western, has lines from Hawarden, Iowa, and Yankton, S. Dak., connecting at Centerville in the southeasterly corner of South Dakota, from whence its line runs northwesterly through Salem, Huron, Redfield, and Aberdeen, S. Dak., to Oakes, N. Dak., where it connects with the Northern Pacific and the Soo Line. This line crosses the Great Northern near Port Emma, N. Dak. This north and south line of the Chicago & North Western crosses the Great Northern just north of Centerville, the Chicago, Milwaukee & St. Paul at Parker, the Chicago, St. Paul, Minneapolis & Omaha east and west line from Sioux Falls to Mitchell at Salem, and the Chicago, Milwaukee & St. Paul again at Vilas; and connects with the Great Northern at Huron, with the Chicago, Milwaukee & St. Paul at Redfield, and with the Minneapolis & St. Louis, the Chicago, Milwaukee & St. Paul, and the Great Northern at Aberdeen.

The North Western has east and west lines diverging from Tracy, Minn., one running west through Elkton, Lake Preston, and Huron, to Pierre, S. Dak., 430 miles from Omaha and 424 miles from Minneapolis, the other running west through Watertown, Elrod, and Redfield, S. Dak., to Gettysburg, S. Dak., 428 miles from Omaha and 400 miles from Minneapolis.

The Minneapolis & St. Louis has an east and west line through Minnesota, through Watertown, Conde, and Millard, S. Dak., to Le Beau, 394 miles from Minneapolis. This line is substantially midway between the Chicago, Milwaukee & St. Paul line to Mobridge and the Chicago & North Western line to Gettysburg. Mobridge, Le Beau, and Gettysburg are substantially similar distances from Minneapolis. The Minneapolis & St. Louis has a line from Conde,

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where it also connects with the Chicago & North Western, northwesterly through Aberdeen to Leola, 337 miles from Minneapolis.

The Great Northern system has an east and west line in the extreme southern part of North Dakota from which it has a line southwesterly from Rutland, N. Dak., through Burch and Claremont, S. Dak., to Aberdeen, S. Dak., where it connects with the Minneapolis & St. Louis, the Chicago & North Western, and with east and west and north and south lines of the Chicago, Milwaukee & St. Paul. It also has a line southwesterly from Benson, Minn., through Watertown and Vienna, S. Dak., to Huron, S. Dak., where it connects with the Chicago & North Western. It connects with the Chicago, Milwaukee & St. Paul at Vienna, and at Watertown with the Chicago & North Western, the Minneapolis & St. Louis, and the Chicago, Rock Island & Pacific. It has another line southwesterly through Minnesota and through Sioux Falls and Lennox, S. Dak., to Yankton, S. Dak., where it connects with the Chicago, Milwaukee & St. Paul and the Chicago & North Western. This line connects with the Chicago & North Western near Volin, and again near Viborg, with the Chicago, Milwaukee & St. Paul at Lennox, and with the Chicago & North Western, the Chicago, Rock Island & Pacific, and the Chicago, Milwaukee & St. Paul at Sioux Falls.

The Great Northern and the Minneapolis & St. Louis lines make the rates from Aberdeen to Minneapolis on both wheat and coarse grains 12.5 cents, which rate is, of course, met by these defendants. The Minneapolis & St. Louis rate from Le Beau to Minneapolis is 17.5 cents and defendants' rates from Mobridge and Gettysburg are the same. At Millard, about 40 miles east of Le Beau, where the Minneapolis & St. Louis crosses the Chicago, Milwaukee & St. Paul, the rate to Minneapolis is 15.5 cents and at Faulkton, about 10 miles south, the Chicago, Milwaukee & St. Paul and the Chicago & North Western have the same rate to Minneapolis—15.5 cents. The Minneapolis & St. Louis crosses the Chicago & North Western at Northville and the Chicago, Milwaukee & St. Paul at Mellette, from both of which points the rate to Minneapolis is 12.5 cents. At Conde, where the Minneapolis & St. Louis line through Aberdeen connects and where the Chicago & North Western is crossed, the rate is the same as from Aberdeen—12.5 cents. At Bradley, some 30 miles farther east, the crossing of the Chicago, Milwaukee & St. Paul, the Minneapolis rate is 12 cents, and at Watertown, some 30 miles farther east, it is via all lines 11.5 cents. The rate to Omaha from Mobridge is 24.5 cents on wheat, 23.5 cents on coarse grains and from Gettysburg the rates are 24 cents on each. At Watertown the rates are 20.5 cents on wheat and 19.5 cents on coarse grains to Omaha.

From Huron to Minneapolis the Great Northern makes a rate of 12.5 cents on both wheat and coarse grains, and, as has been seen,

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this line passes through Watertown from which point the rate is 11.5 cents. From Yankton, S. Dak., 300 miles from Minneapolis, the Great Northern makes the rate to Minneapolis on both wheat and coarse grains 12.5 cents, and to Omaha, 217 miles, the rates are also 12.5 cents. At Sioux Falls, the distance to Minneapolis has been reduced from 300 miles to 238 miles, while the distance to Omaha has been increased from 217 to 246 miles, and the rates to Minneapolis are 12 cents on wheat and 11.5 cents on coarse grains, while to Omaha the rates are 14 cents on wheat and 12 cents on coarse grains. Proceeding along this Great Northern line the distance to Minneapolis continually grows less and that to Omaha greater.

The defendants, as well as the other systems, have numerous branch lines in this territory which have not been especially referred to, but which serve to render the situation more intensely competitive, and to add to the sensitiveness of the rates on grain which here, as elsewhere, are extremely sensitive.

It appears that the greater part of the haul over the Great Northern road from its South Dakota stations to Minneapolis is in the state of Minnesota, and these rates from South Dakota points have been graded up from their rates from Minnesota points. It is understood that the rates from the Minnesota state line to Minneapolis were fixed through some understanding between the Minnesota state commission and the Great Northern, and its rates from South Dakota seem to be fairly and equitably graded up. It is admitted that some three or four years ago uniform reductions were made in the rates from South Dakota points to Minneapolis by all of the roads in South Dakota. Complainant argues that some of these lines were remote from Great Northern competition and need not have been affected by the Great Northern rates against their will. Defendants and interveners, however, assert that the Great Northern and Minneapolis & St. Louis lines control practically all of the rates on grain from South Dakota.

Complainant's representative was asked to furnish a statement of the rates which he thought ought to be made from this territory to Omaha, and in compliance with that request has filed a clear and comprehensive explanation of complainant's wishes. Those wishes are based squarely upon the proposition that defendants' rates to Omaha from South Dakota points should not be greater than the rates on the Great Northern or the Soo Line to Minneapolis for similar distances. It is not necessary to here repeat the many things that have been said with regard to the consideration that should be given to distance as a factor in rate adjustments. It is undoubtedly an element, and, all other things being equal, it perhaps is a controlling element, but it can hardly control where other substantial

considerations are materially different, and the fact that the Great Northern Railroad sees fit to haul grain from Brookland, N. Dak., to Minneapolis—257 miles—for 12 cents per 100 pounds does not seem to impose upon defendants the obligation of hauling grain from Tripp to Omaha—258 miles—for the same rate.

Complainant proposes equal rates to Omaha and Minneapolis, where the distance is the same, and in territory which is nearer to Omaha differentials in favor of Omaha substantially the same as those in favor of Minneapolis where the distance is less to Minneapolis. The exception to this is suggested rates from points on the Chicago & North Western, Redfield to Gettysburg, and Huron to Pierre, which are less than existing rates to either Omaha or Minneapolis. As has been seen, the Great Northern makes the rate to Minneapolis from Huron 12.5 cents. The rates to Omaha are 17 cents on wheat and 14.5 cents on coarse grains. From Wolsey, a few miles west, the rates are slightly higher to both Omaha and Minneapolis. At Ree Heights, perhaps 50 miles west of Wolsey and substantially equally distant from Omaha and Minneapolis, the Minneapolis rates are 18 cents on both wheat and coarse grains, while to Omaha the wheat rate is 20 cents and the coarse-grain rate 19.5 cents. At Harrold, possibly 40 miles farther west, the rates to Minneapolis are 20.5 cents, and to Omaha 22 cents, on both wheat and coarse grains. At Pierre the Omaha rates and the Minneapolis rates are the same—22 cents. There does not seem to be any controlling competition at Wolsey which should not have the same relative effect at all points west of there to and including Pierre. From Redfield to Gettysburg the Minneapolis and Omaha rates seem to be graded up substantially on a parity. On the Chicago, Milwaukee & St. Paul west of Mitchell to and including Chamberlain the rates to Minneapolis grade up more rapidly than do the rates to Omaha.

Complainant's proposed schedule of rates asks in effect that rates from northwestern Iowa points to Omaha be fixed on the basis of the Iowa state distance-tariff rates to Council Bluffs. No especial emphasis was laid on this Iowa situation, although complainant furnished testimony of inconvenience to Omaha shippers and alleged discrimination against them because of disparity of rates from the same points to Omaha as between defendants' lines on account of certain practices with regard to bills of lading on part of the Chicago & North Western and the Chicago, St. Paul, Minneapolis & Omaha. Being asked what harm could be done Omaha if one of defendants charged a higher rate than the other from a point in northwestern Iowa to Omaha, complainant's representative replied that if the grain which they buy or desire to buy is in an elevator on the track of the carrier having the higher rate it must bear a higher transportation

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charge. The complaint as to northwestern Iowa points seems to be principally against defendants, Chicago & North Western and Chicago, St. Paul, Minneapolis & Omaha railways, and those defendants in their brief say:

We have not discussed at any length the special features that may exist with respect to northwestern Iowa rates, and our argument has been confined to rates from South Dakota points, for the reason that if there is any substantial basis of complaint as to the adjustment of rates to Omaha at any of the points in northwestern Iowa referred to, that can be very readily disposed of without affecting the consideration of the main question, namely, whether or not the rates to Omaha from South Dakota points should be based upon the short-line rates to Minneapolis made under competitive conditions which do not exist with respect to Omaha.

Defendants have also indicated a readiness to correct any individual rate that may inadvertently be out of line. These expressions are doubtless made in good faith and pave the way for understandings between complainant and defendants on the points to which they refer.

The real and important question here is whether or not defendants should be required to establish rates from the territory in question to Omaha on a basis of like rates for like distances as compared with their rates from same points to Minneapolis. Upon the whole record we are forced to the conclusion that the rates to Minneapolis are strongly influenced or controlled by competitive conditions which do not likewise affect the rates to Omaha. The interests of the Minneapolis lines which do not also reach Omaha, as well as the demands of the milling interests at Minneapolis, create conditions which, as to the rates and transportation to Minneapolis, are substantially dissimilar from those which apply to the rates and the transportation to Omaha.

The complaint will be dismissed.

No. 3021.

SOUTHERN COTTON OIL COMPANY

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

No. 3165.

SAME

v.

CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.

Submitted April 11, 1910. Decided October 4, 1910.

Crude cotton-seed oil shipments were made into Savannah, Ga., on local rates from points in Georgia and Alabama, there refined and then reshipped on balance of through rates from various points of origin to ultimate destinations. Between the inbound and the outbound movements the rates had been advanced 2 cents per 100 pounds, and defendants applied on these shipments the higher through rates in effect at time of reshipment. Upon complaint that the higher charges were unlawful; *Held*, That the legal rates applicable on these shipments were the rates in effect at the time of the initial movement. Reparation awarded.

H. W. B. Glover for complainant.

C. B. Northrop, R. Walton Moore, and Sloss D. Baxter for Southern Railway Company.

R. Walton Moore for Atlantic Coast Line Railroad Company and Ocean Steamship Company of Savannah.

Charles T. Airey for Central of Georgia Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Each of these cases involves substantially the same questions. They were heard together, and will be so disposed of. Crude cotton-seed oil was shipped into Savannah, Ga., on the local rates from the various points of origin, and after refining at that place it was reshipped on the balance of the through rates from points of origin to ultimate destinations; but between the times of inbound and outbound movements the rates had been advanced 2 cents per 100

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pounds, and under the provisions of the tariffs, as interpreted by defendants, they applied the higher through rates in effect at the time of reshipment.

In case No. 3021, wherein the Atlantic Coast Line Railroad Company and the Ocean Steamship Company of Savannah are named as defendants, two carloads of cotton-seed oil are involved, which moved from Valdosta and Bainbridge, Ga., to Savannah, April 25 and 26, 1908, and after refining were reshipped to New York City, November 12, 1908, and February 20, 1909. These shipments contained an aggregate weight of 102,500 pounds, on which the local rate to Savannah of 19 cents per 100 pounds, aggregating \$194.74, was collected. At the time of these initial movements the through rates from Valdosta and Bainbridge to the city of New York were 27 cents per 100 pounds by way of the Atlantic Coast Line and the line of the Ocean Steamship Company. These rates were in effect until March 15, 1910, when they were increased to 29 cents.

The contention of defendants with respect to this overcharge is that the increased rates of 29 cents became effective October 1, 1908; but its tariff upon which this contention was based was not filed under proper powers of attorney from defendants, and therefore was not legally effective. The 29-cent rates were based upon this defective tariff and the tariff of the Atlantic Coast Line, effective October 30, 1907, which provided that on crude oil shipped locally when refined the through rates to be applied should be those in effect at the time of reshipment. This provision was clearly contrary to law, as indicated in ruling of the Commission on May 29, 1907, entitled *In the Matter of Through Routes and Through Rates*, 12 I. C. C. Rep., 163, which held that the rate applicable to all through shipments is the rate in effect at the time of the initial movement. Therefore, the charge of 29 cents on these shipments moving, as stated, on November 12, 1908, and February 20, 1909, resulted in an overcharge of \$20.50, which the defendants will be required to refund, with interest from February 20, 1909.

In case No. 3165 the shipments of cotton-seed oil moved into Savannah from various points, including Dothan and Montgomery, Ala.; Newnan, Americus, Dawson, Atlanta, Augusta, and Dublin, all in the state of Georgia. The outbound shipments were to Pittsburgh, Pa., Boston, Mass., New York, N. Y., and Bayonne, N. J. It is unnecessary to set forth in detail the rates on and weights of the 18 carloads involved in this complaint, the essential facts being that more than a million pounds of the crude oil moved into Savannah on the local rates. On the outbound movement the expense bills for the shipments into Savannah were applied as part payment of the through rates from points of origin of the crude oil to ultimate

destinations on outbound shipments, aggregating 791,684 pounds, of refined oil from Savannah. The shipments into Savannah all moved in the month of September, 1908. On October 1, 1908, the Central of Georgia, by amendments to the tariffs in effect prior to that time, increased the rates on cotton-seed oil refined in transit from points of origin to the destinations named above by the sum of 2 cents, and when these shipments moved forward the higher rates then in effect were applied under the refining-in-transit rules of that road, which provided that the through rates to be applied should be those in effect at the time of reshipment. This provision, as above stated, was clearly contrary to the law as interpreted by the Commission. It is unnecessary to further refer to these unlawful rate applications, as both the Atlantic Coast Line and the Central of Georgia have corrected their refining-in-transit tariffs to conform to the law in this respect.

The defendants contend that complainant is not entitled to reparation because of the impossibility of identifying each of the outgoing shipments from the refinery as having originated at any of the particular points of origin. There was, however, no proof of substitution, nor was there any indication that the crude oil moved into the refinery was not substantially the same as the refined oil shipped out, and it appears that these shipments were handled in substantially the same manner as was generally customary at that time in the application of transit privileges and practices. It will be observed that these shipments all moved prior to the promulgation by the Commission on May 3, 1910, of its views respecting the legality of transit privileges and practices of the kind as expressed in *In the Matter of Substitution of Tonnage at Transit Points*, 18 I. C. C. Rep., 280. Nothing herein said is to be taken as modifying our views as therein expressed or as in derogation of present duly established rules and regulations of carriers in conformity therewith intended to preserve the integrity of the lawfully established rates. We have considered the claims now before us in the light of the customary regulations and practices in vogue at the time these shipments moved, and in view of all the facts appearing we are convinced and so find that there was exacted of the complainant rates which were unjust and unlawful to the extent of 2 cents per 100 pounds on the shipments here involved and that the complainant is entitled to reparation in the sum of \$158.19, with interest from March 5, 1909, as follows: From the Central of Georgia Railway Company, Merchants & Miners Transportation Company, and Pennsylvania Railroad Company in the sum of \$2.31 on one shipment of refined cotton-seed oil, weighing 11,575 pounds, from Dothan, Ala., to Pittsburg, Pa.; from the Central of Georgia Railway Company and Old Dominion Steamship Company, as

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follows: In the sum of \$7.66 on one shipment of refined cotton-seed oil, weighing 38,299 pounds, from Newnan, Ga., to Boston, Mass.; in the sum of \$16.15 on two shipments, weighing in the aggregate 80,763 pounds, from Americus, Ga., to New York, N. Y.; in the sum of \$31.84 on three shipments, weighing in the aggregate 159,200 pounds, from Dawson, Ga., to New York, N. Y.; in the sum of \$22.42 on two shipments, weighing in the aggregate 112,108 pounds, from Atlanta, Ga., to New York, N. Y.; in the sum of \$18.44 on two shipments, weighing in the aggregate 92,200 pounds, from Augusta, Ga., to New York, N. Y.; and in the sum of \$23.14 on two shipments, weighing in the aggregate 115,725 pounds, from Montgomery, Ala., to New York, N. Y.; from the Central of Georgia Railway Company, Southern Railway Company, Philadelphia, Baltimore & Washington Railroad Company, and Central Railroad Company of New Jersey, as follows: In the sum of \$4.33 on one shipment of refined cotton-seed oil, weighing 21,641 pounds, from Newnan, Ga., to Bayonne, N. J., and in the sum of \$3.09 on one shipment, weighing 15,479 pounds, from Montgomery, Ala., to Bayonne, N. J., and from the Wrightsville & Tennille Railroad Company, Central of Georgia Railway Company, and Old Dominion Steamship Company in the sum of \$28.81 on three shipments of refined cotton-seed oil, weighing in the aggregate 144,060 pounds, from Dublin, Ga., to New York, N. Y.

Orders in accord herewith will be issued.

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No. 3136.
CHICAGO CAR LUMBER COMPANY
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted June 23, 1910. Decided October 10, 1910.

Reparation awarded upon four carload shipments of railroad ties between Tennessee Ridge, Tenn., and Louisville, Ky.

*Adams, Bobb & Adams and James B. Wescott for complainant.
W. G. Dearing for Louisville & Nashville Railroad Company.*

REPORT OF THE COMMISSION.

KNAPP, Chairman:

The complainant entered into a contract with the Cleveland, Cincinnati, Chicago & St. Louis Railway Company to furnish it at Shirley, Ind., a certain number of ties, and by the terms of said contract the complainant was to deliver the ties to the carrier at Louisville, Ky., so that they could be carried from Louisville to Shirley free of charge on account of being company material. Acting under such contract the complainant on December 15 and 16, 1908, shipped four carloads of railroad ties aggregating in weight 190,800 pounds from Tennessee Ridge, Tenn., to Shirley, Ind., upon which there was charged and collected the amount of \$648.72 based upon a rate of 34 cents per 100 pounds, which was constructed of a rate of 33 cents to Louisville plus a 1-cent bridge toll across the Ohio River. The defendant, upon the theory that there was a misrouting, has refunded the amount of \$457.92, being the difference between the total amount paid based on a 33-cent rate and that which would have been paid based on a 9-cent rate, the 9-cent rate being in force between Tennessee Ridge and Evansville, Ind., on the direct line to Shirley by another route. This petition is brought for the purpose of obtaining reparation in the amount of 1 cent per 100 pounds applied to the weight of the shipment or \$19.08. The complainant states that the lumber rate between Tennessee Ridge and Louisville,

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which was 8 cents per 100 pounds, should have applied to the transportation of ties. The Commission has repeatedly held that the rate on ties should not exceed the rate on lumber from which they are made; and while the defendant does not always equalize lumber and tie rates, it has usually done so when requested by complainant. In this case the consignor requested the defendant to put in an 8-cent rate from Tennessee Ridge to Louisville, which was contemporaneously in effect on lumber between these points, but before the request could be complied with the shipments moved and the 33-cent rate had to be applied, though the 8-cent rate was subsequently established and is now in effect.

Although the difficulty would have been avoided had the consignor awaited the publication of the 8-cent rate before shipping, we are of the opinion that the rate upon ties should not have exceeded the lumber rate, and we find that all charges in excess of 8 cents per 100 pounds were unreasonable.

An order will be entered awarding reparation to complainant in the sum of \$19.08, with interest from January 1, 1909, and directing defendant to maintain for a period of two years a rate for the transportation of ties, in carloads, from Tennessee Ridge, Tenn., to Louisville, Ky., which shall not exceed the rate contemporaneously in effect for carriage between the same points of lumber similar in quality to that from which the ties are made.

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No. 3063.

IN THE MATTER OF EXTRA FARE PAID BY PASSENGERS
BY REASON OF THE NONVALIDATION OF THE RETURN
PORTIONS OF LIMITED EXCURSION TICKETS.

Decided October 11, 1910.

Respondents' present regulations providing for refund to passenger of excess amounts collected on account of passenger's failure to validate round-trip excursion ticket found to be reasonable.

C. O. Whittemore for Las Vegas & Tonopah Railroad Company.

E. N. Clark and *T. L. Philips* for Denver & Rio Grande Railroad Company.

W. R. Kelly for San Pedro, Los Angeles & Salt Lake Railroad Company.

Hale Holden for the Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

This is a proceeding instituted by the Commission on its own motion with particular reference to the following transaction:

On September 10, 1909, Mrs. Maria Walsh purchased from the agent of the Las Vegas & Tonopah Railroad Company at Goldfield, Nev., a limited round-trip ticket from Goldfield, Nev., to Omaha, Nebr., via the lines of the Las Vegas & Tonopah Railroad Company to Las Vegas, Nev., the San Pedro, Los Angeles & Salt Lake Railroad Company to Salt Lake City, Utah, the Denver & Rio Grande Railroad Company to Denver, Colo., the Chicago, Burlington & Quincy Railroad Company to Omaha, Nebr., and return via the same route. The return portion of the ticket was not validated at Omaha before being presented for return passage, as required by the tariff and the contract printed on the ticket. Through error on the part of railroad conductors the return portion of the ticket, although not validated, was accepted by the Chicago, Burlington & Quincy Railroad Company, the Denver & Rio Grande Railroad Company, and the San Pedro, Los Angeles &

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Salt Lake Railroad Company, but the Las Vegas & Tonopah Railroad Company refused to accept the ticket for the portion of the journey from Las Vegas to Goldfield, thereby subjecting the passenger to the payment of additional fare in the sum of \$11.55.

In its tariff, I. C. C. No. 104, effective November 5, 1909, the Las Vegas & Tonopah Railroad Company published the following rules regarding the refund of extra fares exacted from passengers by reason of their failure to validate tickets:

**REFUND OF FARES PAID ACCOUNT NONVALIDATION OF ROUND-TRIP TICKETS ALL AGENTS
AND CONDUCTORS.**

In case a passenger holding a round-trip signature ticket (the contract thereof and the tariff under which it is sold requiring that it be validated before it can be accepted for return passage) neglects to have the same executed for return, the Las Vegas & Tonopah Railroad Company will refund the amount passenger is obliged to pay *returning over its road*, providing all other conditions of the contract of the ticket and the tariff under which it is sold are complied with.

Refund will only be made providing the amount paid returning is for transportation over the same roads and via the same junction points, as the unused ticket held by the passenger, and the original purchaser can and does furnish a satisfactory affidavit that the ticket is used in accordance with all the conditions of the tariff under which it was sold and the contract thereof, with the sole exception of validating it for return. Passenger will also be required to furnish receipt (or receipts) or other evidence satisfactory to the railroad companies that such fare or fares were paid returning.

Return portion of signature tickets which have not been validated for return in accordance with contract *must not be honored by conductors*. Fare should be collected to first scheduled stop of train, at which passenger should purchase ticket to original starting point of ticket. Receipt should be given for fare paid on train and passenger instructed to secure receipt for ticket purchased.

Similar rules have been published by the other respondents in this proceeding as follows: San Pedro, Los Angeles & Salt Lake Railroad Company, I. C. C. No. 465, effective January 10, 1910; Denver & Rio Grande Railroad Company, I. C. C. No. 875, effective January 15, 1910; and Chicago, Burlington & Quincy Railroad Company, I. C. C. No. 2089, effective October 15, 1909.

The matter was brought to the attention of the Commission by application of the Las Vegas & Tonopah Railroad Company for permission to make refund to Mrs. Walsh, due to the fact that the tariff rule had not been published when she made the journey.

The respondent carriers above mentioned, over whose lines Mrs. Walsh traveled, have filed answers setting forth at length the reasons which induce them to require validation, the principal reason being to prevent fraudulent use of tickets by persons not entitled to return passage thereon.

The rules which have been published by all of the respondents appear to be reasonable and perhaps go further to protect the passenger from his own carelessness than the Commission would be inclined

to require. Therefore, as it is apparently unnecessary to enter an order requiring a change in the carriers' practice, no hearing on that phase of the case would seem to be required. The only question remaining is whether refund to Mrs. Walsh of \$11.55 shall be authorized. The Commission has declined heretofore to grant reparation on passenger claims due to a reduction in the passenger fare (Rule 46, Conference Rulings Bulletin No. 4), and the claim in this case appears to be analogous to claims which the Commission has refused to entertain. That is to say, Mrs. Walsh is claiming reparation under a right which she did not possess at the time she performed the travel. Moreover, it is probable that numerous other persons are in the same situation and would be entitled to reparation if it were allowed in this particular case. Since the proceeding has been instituted two more claims of a similar nature have been filed with the Commission by the Las Vegas & Tonopah Railroad Company. An order will be entered discontinuing the proceeding, and the Las Vegas & Tonopah Railroad Company will be advised that the Commission declines to authorize the refund to Mrs. Walsh.

The Commission is of opinion that all carriers should establish regulations relating to refund of excess amounts collected from passengers by reason of their failure to validate round-trip excursion tickets which shall be at least as favorable to the passenger as those above quoted from respondents' tariffs, and carriers that have failed to incorporate such provisions in their tariffs are advised to amend them in conformity with this conclusion.

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No. 2964.
GEORGE W. RITER
v.
OREGON SHORT LINE RAILROAD COMPANY ET AL.

Submitted September 6, 1910. Decided October 10, 1910.

1. There is great force in the position of complainant that good faith to the public would require defendants to state in advertisements of their excursions the total amount which would be exacted for the transportation service, of which validation is a part; but it is difficult to see how it can be held to be a violation of the act to regulate commerce to exact a part of the tariff rate at the ticket office when the ticket is sold and the balance of that rate at the validating agency when the ticket is validated.
2. While it seems probable that in some instances the place of validation might be made more convenient than it now is and that the annoyance to the public might be somewhat lessened, still upon the showing made in this record and upon knowledge of the situation, the Commission hesitates to interfere by any general rule. If special instances arise where the inconvenience is undue, those can be dealt with individually.
3. It has been assumed that the validation of these excursion tickets was a regulation or practice which fell within the jurisdiction of this Commission, but that point has not been particularly considered, and is not decided.
4. Under the method of handling these validation fees they never find their way into the revenue returns of the carriers to this Commission. In some way those fees should find their way into the accounts of the railroads; but the circumstance that a proper account of the fees is not given does not of necessity stamp the exaction of it or the method of its exaction as illegal.
5. Complainant's contention that the manner in which these validation fees are handled amounts to a violation of the fifth section of the act is not sustained.

John A. Street for complainant.

Percy L. Williams for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint is directed against the exaction by the defendants of the 50-cent validating charge.

Excursion tickets are frequently sold to a point and return at less than the sum of the one-way fares to and from that destination. If one person uses the ticket to destination and there delivers it to

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another person, who uses the return portion, transportation is obtained by these passengers at less than the tariff rate and at less than the sum paid by other persons receiving the same service. This is plainly a fraud, both upon the public and upon the railroad. For the purpose of preventing this, the railroad company provides that the ticket shall only be good in the hands of the original purchaser, and requires such purchaser to identify himself when required and to "validate" his ticket; that is, to obtain from an agent appointed by the company a statement that the ticket has been presented by the original purchaser and may be used by him for the return passage.

No question is made of the propriety of requiring validation of the ticket, the objection of the complainant being directed entirely to the manner in which the fee is exacted and the validation made.

The usual fee for validation is 50 cents; and this fee is paid at the time of validation to the validating agent. The complainant insists that it is a fraud upon the public to advertise an excursion rate of a certain amount and then require payment of an additional amount. In the case specially referred to by the complainant the excursion was from Salt Lake City to San Francisco, and the advertised excursion rate was \$42 for the round trip. The complainant paid his \$42 and was required to pay at San Francisco an additional sum of 50 cents. This he declares to be an imposition upon the public which ought to be forbidden.

The tariff filed with the Commission fixes the charge which the passenger must pay. This tariff provides that the ticket must be validated and that a fee of 50 cents will be charged for that service. Under that tariff the defendants must have exacted of the complainant \$42.50. There is great force in the position of the complainant that good faith to the public would require the defendants to state in their advertisement of their excursions the total amount which would be exacted for the transportation service, of which validation is a part, but it is difficult to see how it can be held to be a violation of the act to regulate commerce to exact a part of the tariff rate at the ticket office when the ticket is sold and the balance of that rate at the validating agency when the ticket is validated.

The complainant also claims that the manner in which these tickets are validated imposes an unreasonable burden upon the public. It appears from the testimony that sometimes the validation is at the ticket office of the company. This is usually the case when no validation fee is required, and sometimes when such fee is required. Ordinarily, at terminal points upon the Pacific coast where great numbers of these excursion tickets require validation, special validating offices are set apart for that purpose. These offices are not usually at the railroad station where the passenger takes his train, nor at the city ticket office of the company, but in some other place

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where all tickets with that destination, no matter by what route they read, must be validated. For example, in the city of San Francisco, which was the destination of the complainant's ticket, the validating office is a considerable distance both from the station of the Southern Pacific Company, by which the ticket of the complainant read, and also from the city ticket office of the company. The complainant desired to take a certain train leaving in the forenoon, and he began nearly two hours before the departure of the train to attempt to obtain a validation of his ticket. Pullman tickets can not be obtained, nor can baggage be checked upon a ticket until after its validation. This ticket could only be used upon the date of its validation. The complainant was unable to obtain the validation of his ticket in time to check his baggage and obtain his Pullman space, and therefore lost the train by which he desired to go.

The complainant does not claim damages by reason of what happened to him upon this particular occasion, but points to his experience as illustrative of the inconvenience suffered by the public and asks that some general order be made which shall prevent similar occurrences.

It would certainly be more convenient in many respects, and apparently in all respects, so far as the passenger is concerned, if his ticket could be validated at the point where he must obtain his Pullman accommodations and arrange for the checking of his baggage. Upon the other hand, defendants contend that if validation is to mean anything it must be in charge of persons who have some skill in the detection of attempted frauds, and who can determine whether the ticket is presented for validation by the original purchaser. There are said to be 20 validation offices upon the Pacific coast. During the period from 1901 to 1909, inclusive, 580,704 tickets were validated at these agencies, and 3,372 tickets were confiscated because not presented by the proper persons. But for the requirement of validation there can be little doubt that the number of instances of improper use of these tickets would have been much greater. The defendants insist that if the tickets were to be validated at their regular ticket office, validation would be only a name, and that it would be impossible to detect the frauds which are detected at present.

Manifestly, there is some foundation for the claim of the defendants. While it seems probable that in some instances the place of validation might be made more convenient than it now is, and that the annoyance to the public might be somewhat lessened, still upon the showing made in this record and upon our knowledge of the situation, we hesitate to interfere by any general rule. If special instances arise where the inconvenience is undue, those can be dealt with individually.

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The purchaser should be in all cases advised when he buys his ticket that it must be validated, and that a validation fee will be charged. These facts should be plainly stated upon the face of the ticket itself. Some tickets now state the amount of the fee to be exacted, while others state that a validation fee will be required in accordance with the terms of the tariff. We think the purchaser should in all cases be informed upon the face of the ticket of the amount of the validation fee. If so advised, and if these facts appear in the contract very little just complaint can be made as to want of knowledge on the part of the passenger. We also feel that railroad companies should exercise great care in providing convenient places for the establishment of validation agencies and in supplying a sufficient number of agents so that what occurred in the case of the complainant can seldom, if ever, happen. It was said in testimony that the return passage must be begun upon the day of validation, and it is evident that if the ticket were to be validated and put into the hands of the original purchaser for an indefinite period, this would defeat the purpose of validation. Still, it would seem possible to provide for some reasonable leeway in this respect, so that the passenger leaving in the morning might at least validate his ticket the preceding day.

It has been assumed that the validation of these excursion tickets was a regulation or practice which fell within the jurisdiction of this Commission, but that point has not been particularly considered, and is not decided.

This validating fee is paid to the validation agent. The Pacific coast agencies are maintained by the Transcontinental Passenger Association, and the agencies account to the association for the fees received. If the amount of these fees exceeds the expense of maintaining the agency the surplus is transmitted to the Transcontinental Passenger Association, whereas if the cost of the agency is greater than the receipts in the way of fees the transcontinental association makes up the deficiency. The expenses of the Transcontinental Passenger Association itself, including these validating expenses, are paid by the railroads belonging to that association in proportion to the mileage of the railroads, according to the testimony in this record. It follows, therefore, that under the method of handling these validation fees they never find their way into the revenue returns of the carriers to the Interstate Commerce Commission. For the validation of tickets at the 20 agencies on the Pacific coast during the period from 1901 to 1909, inclusive, over \$290,350 must have been paid, which is nowhere reported as a part of the passenger receipts of the railroads handling that business.

This is clearly wrong. In some way those fees should find their way into the accounts of the railroad. But the circumstance that a proper account of the fee is not given does not of necessity stamp the exaction of it, or the method of its exaction, as illegal.

The complainant contends that the manner in which these validation fees are handled amounts to a violation of the fifth section of the act, but we are unable to see how, in the transaction as detailed in the testimony, there is anything amounting to a pooling of freights or a division of earnings.

The complaint will be dismissed.

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No. 2687.

S. M. ISBELL & COMPANY

v.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COM-
PANY ET AL.

Submitted June 24, 1910. Decided October 10, 1910.

Initial carrier held not responsible for misrouting shipment via an Ohio River crossing taking higher combination than might have been obtained via another Ohio River crossing using, as a factor, a special commodity rate south of the river, the initial carrier not being a party to the rates named by the line south of the river. Complaint dismissed.

R. W. Isbell, E. R. Rieghmiller, and Clarence G. Frey for complainant.

Thomas S. Parker for Pere Marquette Railroad Company.

W. A. Northcott for Louisville & Nashville Railroad Company.

O. E. Butterfield for Lake Shore & Michigan Southern Railway Company and Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complaint in this case involves two separate and distinct shipments between different points and, as the matters complained of are different in each case, they will be treated separately.

The first shipment was a less-than-carload lot of dried beans, weighing 2,900 pounds, moving on November 17, 1908, from Springport, Mich., to Anniston, Ala., over the lines of defendants, Lake Shore & Michigan Southern Railway and Cleveland, Cincinnati, Chicago & St. Louis Railway, to Cincinnati, thence via the Louisville & Nashville Railroad to destination. The charges, which were prepaid by complainant, amounted to \$23.20 and were based on a combination rate of 80 cents. The complainant alleges that this rate was unjust and unreasonable in and to the extent that it exceeded a combination rate of 76 cents applicable via Louisville.

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Reparation is asked in the sum of \$1.16, the difference between the charges based on the 80-cent and the 76-cent rates.

Defendants deny that the rate charged was unreasonable and assert that it was the only rate that could lawfully be applied.

While the complaint itself is directed only toward the reasonableness of the rate charged, at the hearing no evidence was offered to show that such rate was unreasonable and complainant rested his case practically on the ground of misrouting, claiming that it was the duty of the initial carrier to send the shipment via Louisville instead of via Cincinnati. We shall, therefore, consider, first, the question of misrouting, and second, the reasonableness of the rate charged.

From Springport, Mich., to Anniston, Ala., no joint through rate is applicable, nor do the tariffs of defendants provide any method for constructing a through rate. Traffic via defendants' lines between these points would have to cross the Ohio River at either Cincinnati or Louisville, at either of which points it would be delivered to the Louisville & Nashville Railroad. From Springport the rate to Cincinnati was 17 cents, and from Cincinnati the Louisville & Nashville published a rate to Anniston of 63 cents. Via Cincinnati, therefore, the combination was 80 cents. From Springport to Louisville the rate was 19 cents, while the Louisville & Nashville published a rate from Louisville to Anniston also of 63 cents. The ordinary combination, therefore, via Louisville was 82 cents. But at the time of this movement there was in effect from Louisville to Nashville, via the Louisville & Nashville, a special commodity rate of 16 cents, while from Nashville to Anniston a class rate of 41 cents was effective. By using these three factors—the class rate to Louisville, special commodity rate from Louisville to Nashville, and class rate from Nashville to Anniston—a combination rate of 76 cents would be obtained, and this is the rate for which complainant contends.

While the shipment was delivered to the initial carrier without any routing instructions, complainant or its agent prepared the bill of lading, presented it to the agent of the carrier at Springport and desired to prepay the freight charges through to Anniston. Thereupon the rate of 80 cents was inserted in the bill of lading, as were also the total charges to be prepaid, \$23.20, based on this 80-cent rate. The amount was paid by the complainant and the bill of lading was then signed by defendant's agent. Only via Cincinnati was this 80-cent rate applicable.

From both Cincinnati and Louisville to Anniston the rates were the same. They were published by the Louisville & Nashville Railroad, but to that tariff the other defendants were not parties. The initial carrier contends that it sent the shipment via

the cheapest reasonable route known to it; that the tariff of the Louisville & Nashville Railroad was not on file in its office at point of shipment and was not required to be; that its own tariffs showed the rate to Cincinnati to be 17 cents, while to Louisville it was 19 cents, and that apparently Cincinnati was the cheaper route. It claims that it was not aware of the special commodity rate between Louisville and Nashville and the class rate from Nashville to Anniston.

The distances from Springport to Anniston via both gateways are as follows:

	Miles
Via Cincinnati.....	863.3
Via Louisville.....	864.4

The complainant does not explain why he paid the 80-cent rate in advance and accepted a bill of lading with that rate shown therein. As early as November 15, 1907, the Commission in one of its administrative rulings (No. 214) held:

Shippers must bear in mind that there is a limit beyond which an agent of a carrier could not reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates. Consignors and consignees should cooperate with agents of carriers in avoiding misunderstandings and errors in routing and must expect to bear some responsibility in connection therewith.

The Commission further held (Ruling No. 200):

Where there is a difference in rates between two points over different lines, shippers must understand that they may get the benefit of the lower rate only by sending their merchandise over the line publishing the lower rate.

Under all the circumstances of this case, we are of the opinion, and so find, that the initial carrier was not guilty of misrouting this shipment.

The testimony given by defendants at the hearing indicates that the rates as charged, both north and south of the Ohio River, compare favorably with the rates on the same commodity between points similarly located. Had it not been for the special commodity rate in effect from Louisville to Nashville no complaint would or could have been made. It appears that that rate was especially established to meet water competition at Nashville. It has since been raised, however, to 23 cents, so that with it as a factor the combination rate on the shipment under consideration would now be 83 cents, or 1 cent higher than the rate via Louisville using the rate from Louisville to Anniston as a factor, and 3 cents higher than the rate charged, based on Cincinnati.

From the facts of record we are unable to find that the rate charged, in and of itself, was unreasonable.

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The second shipment involved in this complaint was made on February 11, 1909, from Bad Axe, Mich., to Tulsa, Okla., and consisted of a carload of dried beans containing 250 bags, which, at an estimated weight of 165 pounds each, made an aggregate weight of 41,250 pounds. The shipment moved over the lines of defendants, Pere Marquette to Chicago and the Chicago & Eastern Illinois, and the St. Louis & San Francisco railroads. At destination freight charges were collected in the amount of \$287.07, based on a rate of 69 cents per 100 pounds and a weight of 41,600 pounds, though the proper charges based upon such weight and rate would have been \$287.04. The initial line and the shipper claim the weight to have been 41,250 pounds, while the Chicago & Eastern Illinois and the St. Louis & San Francisco assert that the weight was 41,600 pounds. Refund is sought in the difference between the charges collected and the charges based on weight of 41,250 pounds. The complainant sold the shipment and the St. Louis & San Francisco Railroad settled with the Pere Marquette Railroad upon a basis of 41,250 pounds. The discrepancy relative to the weight arises from the fact that the Pere Marquette accepts beans for shipment at a weight certified to by the shipper, who does not actually weigh the beans, but ships and sells them in bags at an estimated weight of 165 pounds each. This method of accepting estimated weights furnished by a shipper applies only on the Pere Marquette Railroad. The shipment did not move on a joint rate, but on a combination rate—15 cents to Chicago and 54 cents beyond. The carriers participating in the movement beyond Chicago provided for the actual weighing of the shipment, which resulted in a weight of 41,600 pounds, upon which basis freight charges were collected. So, under the separately established tariffs, the charges which should have been collected at destination were 15 cents from Bad Axe to Chicago upon a weight of 41,250 pounds, and 54 cents from Chicago to Tulsa upon a weight of 41,600 pounds, or an aggregate amount of \$286.52, or 55 cents less than the charges actually collected. Refund of this overcharge of 55 cents, without order of this Commission, should be made by the Chicago & Eastern Illinois and the St. Louis & San Francisco railroads, because the Pere Marquette Railroad has received its proper rate according to its tariff, the excess having been retained by the first-mentioned carriers.

The complaint will be dismissed, and an order will be issued accordingly.

19 L. C. C. Rep.

No. 3180.

S. T. FISH & COMPANY

v.

NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY
ET AL.

Submitted June 28, 1910. Decided October 11, 1910.

Complaint of misrouting not sustained; reparation denied and complaint dismissed.

W. R. Gray for complainant.

O. E. Butterfield and Glennon, Cary, Walker & Howe, by F. H. Schmitt, for New York, Chicago & St. Louis Railroad Company.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

On September 29, 1908, there was shipped from Portland, N. Y., to Chicago, Ill., over line of defendant New York, Chicago & St. Louis Railroad one carload of grapes, weight 24,000 pounds, consigned to Train, Letterman & Ford. After arrival of shipment at Chicago consignee sold same to complainant, who ordered car reconsigned to its order, Livingston, Ill., "route via Big Four, protect through rate." The tariff of defendants permitted reconsignment of such shipments at Chicago and a charge of \$2 was provided therefor. There was no joint through rate from Portland to Livingston in connection with the Big Four, but there was a through rate applicable via that route, made up of the combination of separately established rates of 30 cents to Chicago and 17.1 cents, Chicago to Livingston. The shipment actually moved via the Big Four over this through route and charges were assessed on basis of the aforesaid through rate. There was, however, in effect at that time a through route and joint rate of 37½ cents from Portland to Livingston, applying from Chicago via the Chicago & Eastern Illinois. Complainant contends that shipment should have been sent via the route taking the joint through rate and claims reparation based on the difference between the charges assessed and the charges that would have been assessed had shipment so moved.

The Commission has held that where no joint through rate is in effect the combination of separately established rates via the route of movement constitutes the through rate, and that such through rate is as binding, definite, and absolute as a joint through rate. /s/

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Re Through Routes and Through Rates, 12 I. C. C. Rep., 172. In the present case the defendants literally observed the instructions given when the car was ordered reconsigned to Livingston and sent the shipment via the route designated, and applied the through rate over such route.

Under all the circumstances, we are of the opinion that this shipment was not misrouted by any of the defendants and that complainant is not entitled to any reparation thereon.

On October 1, 1908, there was shipped from Portland, N. Y., to Chicago, Ill., over the line of defendant New York, Chicago & St. Louis Railroad two carloads of grapes, aggregating 49,585 pounds, consigned to Train, Letterman & Ford. After arrival of shipments at Chicago consignee sold same to complainant, who ordered the cars reconsigned to its order, Benld, Ill., a point on the Macoupin County Railroad, "route via Big Four to Gillespie, care Macoupin County Railroad; protect through rate." This routing instruction was observed. Complainant contends that the cars should have been sent via the Chicago & Alton Railroad from Chicago to Girard, care Macoupin County Railroad, because to Girard there was a joint rate which was lower than the rate to Gillespie. Reparation is asked based on the difference between the charges actually assessed and the charges that would have been assessed had shipment moved via Girard.

We find that the Macoupin County Railroad files no tariffs with this Commission, and there was, therefore, no through route and joint rate or through combination rate to Benld in connection with either the Big Four to Gillespie or the Chicago & Alton to Girard. Consequently, it was impossible for defendants to "protect through rate," but it was possible to observe the routing instruction "route via Big Four to Gillespie, care Macoupin County Railroad," and this was done. We are therefore of the opinion that defendants did not misroute these shipments and that complainant is not entitled to any reparation on the ground of misrouting.

The record shows that defendants collected for the movement to Gillespie charges aggregating \$316.62. The rate applicable to Gillespie was a combination of 47.1 cents, made up of 30 cents to Chicago and 17.1 cents, Chicago to Gillespie, which, on weight of 49,585 pounds, would make the freight charges \$233.55. Adding thereto reconsigning charges of \$4 and an admitted icing charge of \$7.50, the total charges would be only \$245.05, leaving an overcharge of \$71.57, which should be refunded to complainant without any order from this Commission.

The complaint will be dismissed, and an order will be issued accordingly.

19 I. C. C. Rep.

No. 2894.

OAK GROVE FARM CREAMERY

v.

ADAMS EXPRESS COMPANY ET AL.

Submitted September 26, 1910. Decided October 10, 1910.

1. Complainant alleges that defendants' rates on cake are unreasonable as compared with their rates on bread; *Held*, That defendants may properly apply a somewhat lower rate on bread than on cake; but that the present rates on cake are unreasonable and should not exceed the regular merchandise rates, excluding the weight of the hamper in which the cake is shipped.
2. Defendants' tariffs provide that the bread rate shall apply to mixed shipments of bread and cake, but not unless at least 50 per cent of the shipment consists of bread. Complainant contends that this rule bars it from making mixed shipments, while it permits certain of its competitors who bake both bread and cake to obtain the bread rate upon shipments of bread and cake; *Held*, That the above rule of defendants discriminates against complainant, and is unjust and unreasonable, and should be discontinued.

Leopold N. Goulston and Edward F. McClennen for complainant.
T. B. Harrison, jr., for defendants.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

The complainant, John W. Alden, doing business under the style of the Oak Grove Farm Creamery, is engaged in the manufacture of cake at Boston, Mass., which he ships by express from his factory to various points in other states, and he complains that the rates charged by the defendants for this service are unreasonable.

As evidence of the unreasonableness of these charges the complainant refers to rates made by the defendants for the transportation of various commodities, but calls attention, especially, to the transportation of bread.

Bread is handled by express in what are known as bread hampers, which are boxes of three sizes. The cubical contents of these different sizes are, in feet, 3.9, 5, and 7.5. The weight of the hampers, in pounds, is 22, 33, and 45. The weight of the bread, in pounds, which each of these hampers will contain is 33, 59, and 93.

The weight of the cake shipped by the complainant varies greatly with the different varieties. Enough to fill the largest size hamper weighs from 64½ to 257 pounds. As actually shipped the hamper usually contains several different kinds of cake, and the net weight of the contents varies accordingly. An actual test of eighteen days indicates that upon the average the net weight of the contents of these

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hampers is from 25 to 50 per cent more when filled with cake than when filled with bread.

The value of the bread is about 4 cents per pound; the average value of the cake shipped by the complainant about 12 cents per pound.

The defendants charge for the transportation of bread their general special rate, and apply this rate to the net contents of the package, returning the empty packages for 5 cents each when received by the shipper at the express office. For the transportation of cake the regular merchandise rates are charged, and these rates are applied not to the net weight but to the gross weight of the package. The empty cases are returned upon the same terms as in case of bread shipments. The complainant insists that his commodity can be handled by the express company more cheaply than bread and that he should not therefore pay a higher rate than is imposed upon bread.

Bread is an article of universal consumption and is more in the nature of a necessity of life than cake. Of the combined shipments by express from Boston 95 per cent are bread and 5 per cent cake.

We think that the defendants may properly apply a somewhat lower charge to the carriage of bread than of cake; but we are of opinion that the rates now applied to the transportation of cake are unreasonable, and that they ought not to exceed the regular merchandise rates of the defendants, applied to the net weight of the packages, the packages themselves when empty to be returned upon the same terms as at present.

Sometime ago the defendants applied the bread rate to mixed shipments of bread and cake. For the purpose of availing himself of the lower rate thus made possible the complainant became, to a limited extent, a baker of bread. It often happened, however, that he would put into a hamper filled with cake only a loaf or two of bread. The defendants claimed, and the complainant did not deny, that he shipped bread with his cake solely for the purpose of obtaining the better rate. With a view to preventing this the defendants provided that the bread rate should not apply unless at least 50 per cent of the shipment consisted of bread. This rule debarred the complainant from making mixed shipments, while it permitted certain of his competitors who bake both bread and cake to obtain the bread rate upon shipments of bread and cake, and the complainant alleges that this rule is unreasonable.

This contention is sustained. The almost universal rule is that where a package contains articles taking different rates of transportation the entire package goes at the rate applicable to the highest rated article in the package. In our opinion the above rule of the defendants discriminates against the complainant, and is unjust and unreasonable, and should be discontinued.

An order will be entered accordingly.

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No. 2548.
PAT. CHAPPELLE
v.
LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted August 4, 1910. Decided October 10, 1910.

Petition of defendant for rehearing denied, the Commission reaffirming its right to exercise jurisdiction over private cars when used for the conveyance of amusement outfits, theatrical companies, and the like.

E. C. Brandenburg for complainant.

W. A. Northcott for defendant.

REPORT OF THE COMMISSION ON PETITION FOR REHEARING.

LANE, Commissioner:

The defendant Louisville & Nashville Railroad Company has presented petition for a rehearing in this matter, asking the Commission to make a specific finding as to whether the Commission claimed to exercise jurisdiction over private cars when such cars are used for the conveyance of amusement outfits, theatrical companies, and the like. In the original opinion (19 I. C. C. Rep., 56) it was said:

We do not doubt the power of the Commission to regulate the rates imposed by carriers upon the movement of private equipment.

This was said advisedly and with full appreciation of the cases decided by the courts holding that as to the movement of circus companies a railroad was a private carrier. No decision has been rendered since the act to regulate commerce holding that as to the transportation of private cars containing theatrical companies a railroad company could class itself as a private carrier which may lawfully discriminate in the transportation service which it furnishes.

A railroad makes the carriage of goods or persons a business and holds itself out to the public as ready and willing to carry "indifferently for all persons any particular class of goods or goods of any kind whatever." We can not recognize the right of the defendant to claim exemption from the provision of this law as to any service

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which it renders as a carrier of persons or property. If it is a private carrier as to private cars or any class of private cars, it may carry such cars free of charge or at any rate that it may choose, differing and distinguishing between each party or car that it carries. Such construction of the law absolutely nullifies it as to all private equipment, whether carrying passengers or freight. A carrier may no doubt lawfully refuse to carry certain classes of private equipment, but it may not distinguish between private cars that are owned by negroes and private cars that are owned by whites, nor may it discriminate between private cars that are owned by Armour & Company and private cars of the same class that are owned by any other concern.

Petition for rehearing will be denied.

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No. 3199.

FRED. W. GREEN, RECEIVER FOR IONIA WAGON COMPANY,
v.
ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL

Submitted September 2, 1910. Decided October 10, 1910.

Rates on hickory spokes from Fort Payne, Ala., and Chattanooga, Tenn., to Cincinnati, Ohio, found unreasonable when compared with the rates on hard-wood lumber.
Reparation awarded

G. M. Stephen for complainant.

Sidney F. Andrews for Alabama Great Southern Railroad Company and Cincinnati, New Orleans & Texas Pacific Railway Company.

H. C. Martin for Grand Trunk Western Railway Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This complaint involves the rate on hickory spokes from Fort Payne, Ala., and Chattanooga, Tenn., to Ionia, Mich. It is claimed that the rates now in effect are unreasonable, and reparation is asked with respect to certain shipments in the past. The rate between both these points of origin and Ionia is made by combination upon the Ohio River. No question is made as to the rate from the river to Ionia, but it is insisted that the rate from both Fort Payne and Chattanooga to the river is excessive. The rate now is, and for some time has been, 28 cents from Fort Payne to Cincinnati, and 23 cents from Chattanooga to Cincinnati. The rate on hard-wood lumber is 17 cents from Fort Payne and 13 cents from Chattanooga, and the original contention of the complainant was that spokes should be carried for the same transportation charge.

The spokes in question were manufactured ready for use. The testimony indicates that the value of spokes is from two to three times the value of the hard-wood lumber out of which they are made. The loading of the cars seems to be substantially the same in either case. The defendants contended that the rate upon the spokes ought to be higher than upon the lumber. After some discussion upon the hearing, the defendants stated that they were willing to establish a rate on

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spokes from both Fort Payne and Chattanooga to Cincinnati 3 cents per 100 pounds above the lumber rate, and the complainants were inclined to admit that this relation of rates was not unreasonable. The rate from the Ohio River to Ionia is the same upon both lumber and spokes, and this appears to be true in several instances at least, but it was said by the defendants that this resulted from competitive conditions and was not the natural or proper relation of these rates.

Without attempting to lay down any rule of general application, or to say what relation of rates ought to be maintained where competitive conditions have produced in the past equal rates upon lumber and upon spokes, but confining our attention entirely to the rates before us, we are of the opinion that the rates now in effect of 28 cents from Fort Payne and 23 cents from Chattanooga to Cincinnati are unjust and unreasonable, and that these rates ought not to exceed rates which are 3 cents per 100 pounds higher than those contemporaneously in force upon hard-wood lumber between these points.

We find that the complainant shipped from Fort Payne, Ala., to and through Cincinnati, five carloads of spokes, aggregating in weight 235,450 pounds, and that it paid at the rate of 28 cents per 100 pounds charges upon said shipments up to the Ohio River aggregating \$659.26; that a reasonable rate to have charged would have been 20 cents per 100 pounds; that the complainant is entitled to recover of the Alabama Great Southern Railroad Company and the Cincinnati, New Orleans & Texas Pacific Railway Company the sum of \$188.36, being the difference between the amount paid and the amount which should reasonably have been exacted, with interest from January 1, 1910.

We further find that the complainant shipped from Chattanooga, Tenn., three carloads of spokes to and through Cincinnati, aggregating in weight 153,250 pounds, upon which charges at the rate of 23 cents per 100 pounds aggregating \$352.47 were paid; that said movement was via the Cincinnati, New Orleans & Texas Pacific Railway; that the charges for said service ought not to have exceeded 16 cents per 100 pounds, or \$245.20 in the aggregate, and that the complainant is entitled to recover of said defendant company the sum of \$107.27, with interest from January 1, 1910.

An order will be issued accordingly.

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No. 1671.

A. P. MORGAN GRAIN COMPANY ET AL.

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

No. 1683.

RAILROAD COMMISSION OF ALABAMA

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

No. 1727.

RAILROAD COMMISSION OF GEORGIA

v.

ATLANTIC COAST LINE RAILROAD COMPANY ET AL.

Decided October 15, 1910.

Rates on certain classes and commodities from Ohio and Mississippi river crossings to Atlanta, Ga., and to Birmingham, Ala., which were advanced August 1, 1908, not found to be unjust, unreasonable, or unduly discriminatory. Complaint dismissed.

Wimbish, Watkins & Ellis for complainant A. P. Morgan Grain Company et al.

Alexander M. Garber, Henry C. Selheimer, Samuel D. Weakley, and W. D. Nesbitt for complainant railroad commission of Alabama.

John C. Hart and James K. Hines for complainant railroad commission of Georgia.

Ed. Baxter and R. Walton Moore for all defendants.

Alex. P. Humphrey, Edward Colston, Sanders McDaniels, and Claudian B. Northrop for Southern Railway Company, Cincinnati, New Orleans & Texas Pacific Railway Company, and Alabama Great Southern Railroad Company.

William G. Dearing and Henry L. Stone for Louisville & Nashville Railroad Company.

Rosser & Brandon for Atlanta, Birmingham & Atlantic Railroad Company.

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REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

These three cases were heard and considered together, because the substantive matter of each is based upon the advances made in rates, effective August 1, 1908, on articles included in classes B, C, D, and F, fresh meats (C. L.), grain and hay, grain products, and packing-house products from Ohio and Mississippi river crossings to certain destinations in the territories embraced by the South-eastern Freight Association and the Southeastern Mississippi Valley Association.

The complainants in case No. 1671 are the A. P. Morgan Grain Company, a copartnership, and 40 other persons, firms, and corporations doing business in the cities of Atlanta, Columbus, Macon, Cordele, Albany, Valdosta, Dublin, Montezuma, Rome, and Athens, in the state of Georgia.

The complainants in cases Nos. 1683 and 1727 are, respectively, the railroad commission of Alabama and the railroad commission of Georgia, both acting under the authority of law and in behalf of the people of those states.

The defendants common to all three cases are:

The Atlantic Coast Line Railroad Company; Louisville & Nashville Railroad Company; Nashville, Chattanooga & St. Louis Railway Company; Atlanta, Birmingham & Atlantic Railroad Company; Southern Railway Company; Cincinnati, New Orleans & Texas Pacific Railway Company; Alabama Great Southern Railroad Company; Illinois Central Railroad Company; Central of Georgia Railway Company; St. Louis & San Francisco Railroad Company; Seaboard Air Line Railway, and S. Davis Warfield, R. Lancaster Williams, and E. C. Duncan, as receivers thereof; and the Western Railway of Alabama.

To the defendants named above are added in case No. 1671 the Georgia Southern & Florida Railway Company and the Atlanta & West Point Railroad Company; in case No. 1683 the Mobile & Ohio Railroad Company; and in case No. 1727 the Georgia Southern & Florida Railway Company, the Wrightsville & Tennille Railroad Company, the Atlanta & West Point Railroad Company, and the Western & Atlantic Railroad Company.

The pleadings are elaborate, the records voluminous, and the briefs and arguments exhaustive. The advances over the rates in force prior to August 1, 1908, upon which these complaints arose, are as follows:

Class B (embracing meats, salt, in bulk, C. L., minimum weight 24,000 pounds; bacon [smoked, dried, or salted], and hams, in bulk, C. L., minimum weight 24,000 pounds), 3 cents per 100 pounds, C. L.

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Class C (embracing flour in sacks [not paper] actual weight), 2 cents per 100 pounds, C. L.

Class D (embracing corn, viz, in the shuck or on the ear, C. L., minimum weight 30,000 pounds; shelled, minimum weight 40,000 pounds; oats, C. L., minimum weight 32,000 pounds; and rye, C. L., minimum weight 40,000 pounds), 2 cents per 100 pounds, any quantity.

Class F (embracing flour in barrels), 4 cents per barrel; any quantity. Fresh meats, C. L., 3 cents per 100 pounds; grain and hay, 2 cents per 100 pounds; grain products, 2 cents per 100 pounds; packing-house products, 3 cents per 100 pounds, C. L.

These advances were applied from the Mississippi and Ohio river crossings to Georgia, Alabama, Florida, and certain Carolina points of destination. For the purpose of deciding the questions raised by these cases, however, it will be sufficient to consider the advanced rates to Atlanta and Birmingham alone, as these were the destination points most frequently referred to throughout the investigation, the rates to other destinations being based upon, or adjusted with relation to, the rates to these cities, and as the undue discriminations alleged in the complaint of the railroad commission of Alabama are inferred from the adjustment of rates between them.

The history of the rates on the classes and commodities specified from the various Mississippi and Ohio river crossings to Atlanta and Birmingham reflects the adjustments reached, or attempted, by the carriers between the services rendered by them and the values of such services to the public as modified by competition for transportation between the carriers themselves and by competition for advantageous rates between the points of production and points of consumption. The rates themselves, taken at any particular period, were the resultants of the conflicting forces at work prior thereto, frequent violent fluctuations in the rates marking rate wars between the carriers. Until the year 1884, when, as the outcome of a long period of adjustment, the rates were reduced to one-half of what they had been originally, the fluctuations in the rates in question were wildly erratic. Nothing can be learned from a study of the rates prior to that year that would shed light upon their present reasonableness either with respect to the carriers or to the shippers and consumers. Beginning at that time, however, the rates on the classes and commodities in question commenced to take more stable and consistent positions, which were maintained until the year 1891 notwithstanding violent aberrations therefrom of momentary duration only. In the year 1891 the rates to Atlanta, by reduction, reached practically the basis made effective by the advances of August 1, 1908, with the exception that the present relative adjustment of rates between Atlanta and related points and Birmingham and related points did not then exist.

As the advances apply equally to the various Ohio and Mississippi river crossings, and as the present relative adjustments of rates as

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among the crossings has been long established and is not attacked, it will be sufficient if, for the purpose of illustrating the rate situation in the territory under consideration, we consider the various rates from one of the crossings, for instance, from Louisville, Ky., to Atlanta and to Birmingham, from the year 1891 to date.

Effective September 1, 1891, the rates from Louisville, Ky., to Atlanta, Ga., were reduced from what they had been for three years theretofore (practically from the real basis established in 1884), 1 cent on class B, 3 cents on class C, 3 cents on class D, and 6 cents on class F. As thus reduced and effective on that date, the rates per 100 pounds were on class B 35 cents, on class C 28 cents, on class D 24 cents, on class F 48 cents. These rates have never been exceeded since that date with the exception that the rate on class B, owing to the advance of August 1, 1908, is now 36 cents, an advance of 1 cent; to offset this, however, the rate on flour in sacks, any quantity, formerly in class C, even under the advance, is now 4 cents less than on September 1, 1891. These rates to Atlanta, as established September 1, 1891, remained practically unchanged until February 1, 1905, a period of thirteen years and five months, with the exception that for a total period of about seven months drastic cuts were made in some of the rates, but without any ultimate or permanent effect upon the rates themselves, and with the further exception that in 1900 the rates on flour in sacks were reduced to correspond with classes D and F. In other words, the rates to Atlanta, as reduced September 1, 1891, remained in effect continuously until February 1, 1905, the violent and ephemeral reductions thereof being due not to adjustment between the carriers and shippers, but to short, sharp conflicts between the carriers themselves; these rate wars were unreasonable and their results can not be used as measures of reasonableness. Effective February 1, 1905, the rates from Louisville to Atlanta were reduced as follows: Class B, 2 cents, from 35 cents per 100 pounds to 33 cents; class C, flour in sacks, 2 cents, from 24 cents per 100 pounds to 22 cents; class D, 2 cents, from 24 cents per 100 pounds to 22 cents; and class F, 4 cents per barrel, from 48 cents per barrel to 44 cents.

The history of these rates from Louisville to Birmingham is not dissimilar to what has been outlined above with respect to Atlanta. No change of any kind, however, was made in the rates to Birmingham, February 1, 1905, at the time the Atlanta rates were reduced, but the adjustment as between Birmingham and Atlanta then reached was continued under the rates made effective August 1, 1908, whereby an actual advance in the rates to Birmingham resulted. From April 22, 1901, to July 31, 1908, inclusive, the rates from Louisville to Birmingham per 100 pounds were: Class B, 31 cents; class C, flour in sacks, 20 cents; class D, 20 cents; class F, 40 cents. These rates

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were increased August 1, 1908, by the amounts of the advances already specified.

With respect to the rates to Atlanta, effective February 1, 1905, each complaint charges, in these words, that—

The question of the reduction in freight rates to Atlanta and related points had been pressed upon the attention of the carriers by shippers and other interested parties with the result that a citizens' committee was appointed by the city council of Atlanta to confer with a committee of traffic officials of the railway lines initial at Atlanta. Conferences were held on November 15 and 16 and on December 6 and 7, 1904, at the Piedmont Hotel, in the city of Atlanta, Ga. The whole body of rates, both from eastern and western points of origin, was discussed and a general readjustment was arrived at. The rates from Ohio and Mississippi river crossings to Atlanta and related points were carefully examined and considered, and the following reductions were voluntarily accorded by the railroad companies, to wit:

<i>Per 100 pounds.</i>		<i>Cents.</i>
Class B.....		2
Class C.....		2
Class D.....		2
Class F.....		4
Flour in sacks.....		2
Fresh meats, C. L.....		2

Similar reductions in rates were also made to other points related in rates to Atlanta. It was agreed between the traffic officials of the railroad companies and the citizens' committee that the reduced rates were just, reasonable, and compensatory.

Subsequently the railway companies prepared and issued, effective February 1, 1905, their freight tariff incorporating these reduced rates, in which rates each of the railway companies defendants to this bill joined and concurred.

To this charge the defendants answered admitting the facts of the conferences and the subsequent reductions, but denying agreement that the reduced rates were just or reasonable or compensatory and denying further the voluntary character of such reductions.

It should be noted that all three of these complaints attack primarily the advances made August 1, 1908; the two Georgia complaints contending that the rates in effect from February 1, 1905, to July 31, 1908, should not be exceeded, and the Alabama complaint alleging that the rates as advanced are not only unreasonable and excessive, but are also unduly prejudicial and discriminatory as against Birmingham and related points. The advances to Atlanta and related points canceled the reductions made February 1, 1905, and with respect to class B, fresh meats, C. L., and packing-house products, added 1 cent per 100 pounds to the rates in effect prior to the reduction. The advances made August 1, 1908, to Birmingham and related points actually raised the rates, but it was not until such raise in the rates that Birmingham complained of the adjustment of rates as between it and Atlanta as being an unjust discrimination against Alabama points.

All the complaints allege that the reductions made in the rates from Ohio and Mississippi river crossings to Atlanta and related points, effective February 1, 1905, were voluntarily accorded by the carriers, and that it "was agreed between the traffic officials of the railroad companies and the citizens' committee that the reduced rates were just, reasonable, and compensatory." These allegations are denied by the answers, and the testimony is clear that the reductions in rates to Atlanta effective February 1, 1905, were the result of an adjustment made by the carriers in view of conditions presented prior to that date and were not of their own choice. Under date of July 16, 1904, in a report in the case of *Atlanta Freight Bureau v. Railroad Companies*, which case involved the readjustment of rates between Atlanta and Savannah and Brunswick, Ga., as well as an equalization of interstate rates to and from Atlanta, Ga., the railroad commission of Georgia held as follows:

The commission finds upon investigation that the rates promulgated by it are as a whole lower than the rates established by the commissions of other southern states. * * * But notwithstanding this fact, should the various railroads entering Atlanta fail to make a satisfactory adjustment of the rates complained of, fully correcting discriminations, then this commission will undertake to so revise its tariff, especially as to long distances in this state, as will at least mitigate and as nearly as practicable afford the relief to the various points in the state which complain of being discriminated against in favor of points outside of the state so far as this commission can do so in justice to all concerned.

Thereupon the Georgia commission ordered the carriers to correct said discriminations within sixty days.

Some of the carrier defendants to that case, not understanding clearly the full import of the above decision, wrote to the railroad commission of Georgia for an interpretation thereof, which was furnished in a letter from that commission some time prior to August 24, 1904. In that letter the Georgia commission said:

The commission is of the opinion that the rates from the several Ohio River crossings to Atlanta, Ga., should be no higher than from those crossings to Birmingham, Ala., with the same relative basis from other points basing thereon as is now observed in making such rates.

Thereafter, on September 16, 1904, the Georgia railroad commission issued a further report and order which, in part, is as follows:

Wherefore the various railroads responsible for the discrimination against Atlanta (i. e., discriminations on account of interstate rates) having failed to remove the same within sixty days allowed them for that purpose, the commission, in accordance with its expressed purpose of July 16, 1904, will first revise its intrastate tariff, as herein set forth. * * *

Other commodity rates will be published later, but those in circular 301 are now made effective to enunciate the principle which will hereafter be upheld by this commission, of enabling Georgia manufacturers to trade on terms as nearly equal to those enjoyed by the manufacturers of other states, and who ship their goods into Georgia, as the limitations which are placed upon us by the courts of the country will allow.

The rates prescribed in said circular 301 were almost exactly one-half of the rates theretofore in effect and concerning which the Georgia commission had congratulated itself by comparison with other southern states only two months before. On September 20, 1904, another reduction in intrastate rates, known as circular 302, was issued.

However, the rates thus prescribed never became effective, because of an injunction issued by the circuit court of the United States for the northern district of Georgia restraining the enforcement of the same. Part of the subsequent history of this matter is well set forth in the Thirty-second Report of the Railroad Commission of Georgia, dated February 15, 1905, immediately after the reduced rates of February 1, 1905, became effective. The Georgia commission therein says:

November 28, 1904, * * * a hearing was partially had on the merits of the cases. Pending the hearing on the question of permanent injunction a proposition was made * * * that if circulars 301 and 302 should be abrogated by the commission then the roads would dismiss their various causes against the commission from the courts. The roads suggested, further, that if this were done they would undertake to make such a reduction and revision of rates as would be acceptable to the commission. Upon the advice of the attorney-general the commission deemed it wise to adopt this course, which was accordingly done. As a result of this course on the part of the commission there have been already large reductions made in interstate rates by the various roads entering the state.

About the same time—that is, during November and December, 1904—conferences were had between a citizens' committee appointed by the city council of Atlanta and the traffic officials of the carriers. The stenographic report of these conferences indicates that in addition to the pressure brought to bear upon the carriers in circulars 301 and 302 through the complaint of the Atlanta Freight Bureau, certain municipal facilities needed in the construction of the Atlanta Terminal had been withheld, the carriers being advised that such facilities, rights of way over the streets, etc., might be had, provided the discriminations against Atlanta and in favor of Birmingham in the matter of freight rates were adjusted.

The conferences with the Atlanta citizens' committee occurred in November and December, 1904, the agreement between the carriers and the railroad commission of Georgia occurred just after November 28, 1904, and the reduced rates were made effective February 1, 1905. The Atlanta Terminal was completed thereafter. The evidence is clear that the charges in each of the complaints that the Atlanta reductions of February 1, 1905, were voluntarily accorded by the railroad companies and that the latter agreed that the reduced rates were just, reasonable, and compensatory have not been sustained, and that the reductions were the result of an adjustment or compro-

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mise made by the carriers in view of conditions prior to February 1, 1905, and not of their free choice.

With regard to the adjustment of rates reached February 1, 1905, as between Atlanta and Birmingham, and maintained ever since, it is clear that this was in reality what was sought by Atlanta, rather than an actual reduction of rates, and it is equally clear that no objection was made thereto on behalf of Birmingham for three years and a half, or until the said adjustment was continued in the advanced rates effective August 1, 1908. Hence, as applied to Atlanta and related points, the rates established August 1, 1908, on classes C, D, and F must be considered as mere continuations of the rates in force since the year 1891. As applied to Birmingham and related points, the rates on all the classes and commodities here considered, which substantially date back to 1891, without the recession therefrom of three years and a half which occurred in the Atlanta rates, were actually advanced August 1, 1908, and the question which we must determine as to them is, Are they unjust and unreasonable in themselves?

While we are not prepared to say that the acquiescence of Birmingham in the adjustment of rates as between it and Atlanta, reached February 1, 1905, should estop it from now complaining of such adjustment, we do hold that under all the circumstances of these cases the main question for us to determine here is the reasonableness and justice of the rates made effective August 1, 1908, and that the question of discrimination or prejudice against Birmingham is, in view of the record, of secondary importance only. In this connection it is to be observed that the advantage of Birmingham's geographical position was not destroyed by the adjustment of rates made February 1, 1905, and continued in the advances of August 1, 1908, but that under this adjustment Birmingham's rate advantages are merely diminished in extent. From Cincinnati to Birmingham and Atlanta the distances are the same and the rates on classes B, C, D, and F are identical. From all other Ohio and Mississippi river crossings Birmingham has an advantage over Atlanta on these classes of 2 cents per 100 pounds. Nothing in all the voluminous testimony before us is persuasive that this adjustment is unduly preferential or unjustly prejudicial to either Birmingham or Atlanta, taking the whole situation into consideration.

The attacks upon the advances may be considered together. While the advances affect commodities of prime utility and daily necessity, the rates themselves are the things for consideration and the question for this Commission to determine is whether such rates are in any respect in violation of the act. The question in any case is not whether the rates under consideration are the result of a reduction or of an advance, but whether the rates themselves are unjust,

unreasonable, and unlawful. A rate that has been reduced may still be too high and one that has been advanced might, conceivably, be too low.

The complaints of the A. P. Morgan Grain Company et al. and of the railroad commission of Georgia are directed against the practical restoration of the rates in effect for many years prior to February 1, 1905. This restoration of rates, which still preserves the adjustment reached at that time between the rates to Atlanta and to Birmingham, is not open to the charge of being a breach of faith upon the part of the carriers, for the adjustment itself was what was sought by Atlanta. The situation is different with respect to the complaint of the railroad commission of Alabama, which alleges that the rates effective August 1, 1908, are unjust, unreasonable, and excessive, for the reason, *inter alia*, that the long-continued existence of the prior rates raises a presumption of their reasonableness and compensatory character against the carriers.

This fact of the advances, with respect to Birmingham and related Alabama points, that they are upon rates that had been maintained for a very long series of years is to our minds the most serious question raised in these cases, and presents a situation that imposes upon the carriers the duty of giving exceedingly good reasons therefor.

The rates in effect prior to February 1, 1905, were presumptively reasonable and just with respect to the public and compensatory to the carriers; these rates, while presumptively reasonable and just in and of themselves, were discriminatory as between the various points of destination in that they unduly preferred Birmingham and related points to the prejudice and disadvantage of Atlanta and related points. This discrimination between Alabama and Georgia destinations having been corrected by the rate adjustment effective February 1, 1905, the same having been reached by a reduction in the rates to Atlanta; and the adjustment having been continued under the rates as advanced August 1, 1908, which so far as Atlanta is concerned was a mere restoration of rates, it follows that the advances which are embraced in the rates effective August 1, 1908, may be examined with respect to whether they are just or unjust, reasonable or unreasonable, to Atlanta or to Birmingham, with the assurance that whatever may be found to be true of the rates to either destination will also be true for the rest of the territories embraced in these complaints.

Both the adjustment of rates as between Birmingham and Atlanta and the advances made August 1, 1908, were concurred in by all the defendants and were the results of concerted action, and the evidence is clear that no advance would have been made at one place without a corresponding advance at the other. The effect of concert of action between all the carriers defendant is to estop

them from claiming that because certain carriers participate in the haul to Birmingham which do not participate in the haul to Atlanta the reasonableness or unreasonableness of the rates to Birmingham must be determined with respect to the individual carriers serving such place.

From the enormous record of these cases we find certain facts that bear upon the questions before us, and we set forth these facts in view of the importance of these cases to the large and progressive section of our country interested in these rates.

There are 3,641 articles upon which rates are published from Louisville, Ky., to Atlanta, Ga., under classification and commodity clauses. In class B there are 18 articles, in classes C, D, and F there are 47. Only 2 articles have the same rates as class B and only 4 the same rates as C, D, and F. There are 214 articles having lower rates than class B and only 49 having lower rates than classes C, D, and F. This applies to the advanced rates and shows that out of all the articles on which rates are published between Louisville and Atlanta 93½ per cent carry higher rates than the advanced rate on class B, and 97½ per cent are rated higher than the advanced rates on classes C, D, and F. These rates are all made with reference to the rates via other river crossings and while the same proportions between the rates on the various articles from the several river crossings might not obtain, and while the comparative density of traffic in classes B, C, D, and F to the density of all other traffic would vary with respect to the several crossings and the different carriers, nevertheless it can not be said that in the adjustment of rates as among the various articles offered for transportation, the rates on classes B, C, D, and F are relatively too high.

Most of the articles embraced under these classes are regarded by the carriers as time freight; that is, as freight that must be moved promptly in order to serve the public, as well as to avoid claims for damage in transit. Grain, milled or unmilled, is liable to damage from heat and moisture; fresh meats and packing-house products move on fast schedules in refrigerator cars, the refrigeration being free, and the return haul frequently being empty. Most of the wheat and much of the corn is milled in transit without extra charge for the privilege, and the loss and damage claims in these classes, even under normal conditions, are higher than the average of such claims on all commodities.

To justify the advance in rates and explain the reasons therefor, the defendants show the increase in taxation and in the prices of materials and labor.

To answer this the complainants urge that the increase of efficiency in labor and engines and the increased carrying capacity of the equipment more than counterbalance the above increases in cost, and insist

that even though the net returns per ton-mile have decreased, still the total profit to the carriers is more than ample under the law.

If we inquire the extent of the present advances, we find that, measuring them by the actual movement of articles included in classes B, C, D, and F through the various Ohio and Mississippi river crossings during the calendar year 1907, it would be as follows:

Alabama.....	\$188,667. 41
Florida.....	66,613. 19
Georgia.....	288,370. 78
Carolinas.....	47,707. 92

All five states.....	589,359. 30
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If we consider either the rates themselves or the specific advances that have resulted in the present rates with respect to the revenues of the defendants, we are unable to find that they are excessive, unjust, or unreasonable.

The parties hereto have insisted that the advances which form the subject-matter of these complaints are only a part of a general advance made or to be made in the freight rates throughout the south. The complainants point to this situation as furnishing a reason, and an opportunity, for restrictive action by this Commission; the defendants, on the other hand, insist that in view of the necessity of a general advance and the practical difficulties surrounding the subject the selection of these particular commodities to initiate the advance was merely a matter of expediency.

We are not unmindful of the situation thus placed before us; this report, however, is confined to the specific matters now in issue and is not to be construed as extending beyond them or as indicating in any degree approval of other or further advances in rates.

Looking at this matter in its bearing upon the prosperity and development of the south, we repeat what we said in the case of the *City of Spokane v. Northern Pacific Ry. Co.*, 15 I. C. C. Rep., 376, p. 417—

It is of first importance that our railway service should be efficient, for just in proportion as it is inadequate, industry must suffer and commerce languish.

As the matter was well stated by the late Mr. Justice Brewer when on the circuit bench:

Compensation implies three things: Payment of cost of service, interest on bonds, and then some dividend. Cost of service implies skilled labor, the best appliances, keeping of the roadbed and the cars and machinery and other appliances in perfect order and repair. The obligation of the carrier to the passenger and the shipper requires all these. They are not matters which the carriers can dispense with, or matters whose cost can by them be fixed. They may not employ poor engineers, whose wages would be low, but must employ competent engineers, and pay the price needed to obtain them. The same rule obtains as to engines, machinery, roadbed, etc., and it may be doubted whether even the legislature, with all its power, is competent to relieve railroad companies, whose means of transportation are attended with so much danger, from the full performance of this obligation to the public. The fixed charges are the

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interest on the bonds. This must be paid, for otherwise foreclosure would follow, and the interest of the mortgagor swept out of existence. The property of the stockholders can not be destroyed any more than the property of the bondholders. Each has a fixed and vested interest, which can not be taken away. (*C. & N. W. Ry. Co. v. Dey*, 35 Fed. Rep., 879.)

The condition of most of the railroads in this section of the country is not yet up to the highest standard, and in order that their facilities may be improved and extended to the ultimate lasting advantage of the people of the south, it is necessary that the carriers be permitted to charge rates that are fully compensatory for the services they perform so long as such rates have not been shown to be unjust, unreasonable, or excessive with respect to the public.

We are unable to hold that an advance is unreasonable because some part of the benefit therefrom will accrue to a carrier that "during the period of the last ten years has regularly paid interest on its total bonded debt," and in addition thereto has recently paid dividends upon its stock.

Congress has not seen fit to give this Commission supervision of the stock and bond issue of the various carrier corporations engaging in interstate commerce, nor has any physical valuation of railroad property been authorized by federal authority. The decisions of the Supreme Court lay down the rules by which the courts and this Commission must judge of the reasonableness, justice, and compensatory character of interstate rates. In the case of *Smyth v. Ames*, 167 U. S., 438, the Supreme Court, speaking by Mr. Justice Harlan, said:

What the company is entitled to ask is a fair return upon the value of that which it employs for the public convenience. On the other hand, what the public is entitled to demand is that no more be exacted from it for the use of a public highway than the services rendered by it are reasonably worth.

Upon the whole record and tested by this rule the rates effective August 1, 1908, on the classes and commodities in question from Ohio and Mississippi river crossings to the territories named have not been shown to be unjust, unreasonable, or excessive.

It follows that these complaints must be dismissed, and an order in accordance herewith will be issued.

LANE, *Commissioner*, dissents.

CLEMENTS, *Commissioner*, dissenting:

In dissenting from the opinion of the majority, a position always to be deplored, it would be perhaps enough to say that it is impossible for me to find justification for the threatened burden upon the transportation of this great section of the country either in the needs of carriers, the history of rates, or the ability of the public to pay 12 cents per capita more for the staples affected.

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Therefore, passing by the suggestion that this is but an entering wedge to open the way to further advances, ignoring the fact that the short-lived panic of 1907 was responsible for these particular advances, just as prosperity and the right to share it has been made the basis for advances under other conditions; passing the charge that these advances are the result of unlawful combinations in restraint of trade, it may be enough to declare that, listening to most of the testimony, having for months this subject under consideration, anxious for a solution that shall secure the welfare and advantage of the carriers, as well as the states they serve, I can not believe that these advances on these classes are or can be justified by existing conditions.

Much stress is laid by the majority upon competitive conditions as producing the rates as they existed prior to the advances. They are said to have been the result of "violent fluctuations," "violent aberrations," and fluctuations "wildly erratic," and the conclusions reached appear to be based largely upon the previous existence of competition. It does not appear that this competition was different from that which was at the same time common among the railways of the entire country. There was not during part of the period referred to any public control of interstate transportation and rates, and practically the sole protection of the public from unjust and unreasonable charges was the public policy to keep alive and in full vigor competitive forces. However this policy may be characterized it was then and is yet the spirit of the laws, both national and state, and the competitive character of the origin of thousands of rates in this country to-day might be pleaded in favor of an advance if that is to be the basis for assumed inadequacy of revenue. We must not lose sight of the fact that during the period in question competition not only took the form of rate wars, but that rebating from the published tariffs, even after the passage of the act to regulate commerce, was a matter of common practice and the published rate was far from representing in many cases the true basis of the revenues of the carriers. The cessation of rebating has resulted in important net increases in revenue, even at the same published rates. The same is true in regard to the diminution of free transportation.

It is the finding of the majority that the basis of rates in effect at the time of the contested advance had not been voluntarily established by the carriers in 1905. These rates were put into effect by the carriers after conference with the shippers as an adjustment of conditions and rates long unsatisfactory and cause of complaint, and also after the order of the Georgia commission referred to had been enjoined by the federal courts and thereafter canceled by that commission. It is difficult for me to comprehend just what compulsion, either in law

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or in fact, was brought into play which would render these rates compulsory in any proper sense of that term.

The principle of the rule quoted by the majority from the case of *Smyth v. Ames* is all-pervading, but the facts presented by the record in this case afford no possible basis for testing the reasonableness of these particular rates by that rule. In that case there was involved the whole of the schedules of rates, classifications, and traffic regulations applying to the entire intrastate transportation in Nebraska, which had been prescribed by the state. The proof in that case went exhaustively into the detailed cost of service on every line of railroad in the state and covered fully the valuation of the various railroad properties. The actual results of the computations both by the railroad and state officials disclosed that the rates prescribed in the statute would entail upon the carriers a loss in the conduct of their intrastate business. The rates here involved, though important, are those only on a few commodities, comprising a relatively small part of the carrier's entire business. The record does not in this case, as in the Nebraska case, make full disclosure of the cost of service and the value of the properties, upon which alone the necessity of any general advance or general reduction in rates may be predicated. Even if this case was a parallel to the Nebraska case, involving the whole body of the defendant's rates, how could it be possible, without a disclosure of these basic facts, to determine whether or not the rates involved are or are not necessary to fulfill the requirements of the rule quoted from that case? Reference to this rule upon the record in the case before us is no more helpful than would be the declaration of the first section of the act that all rates shall be just and reasonable, embodying a principle equally applicable to all cases. The issues and facts essential to a test of rates by this rule are wanting in this case. Such essential facts were present in the record of the Nebraska case for a determination of the constitutional question there presented and determined. The two cases are so wide apart in respect of the scope of the issues involved and the facts of record that we must, it seems to me, look in vain to the Nebraska case for any help in the determination of the case before us except as must be universally recognized in all cases that both the carriers and the shippers are entitled to demand rates that are reasonable and just. How can it be said that the rates here involved have been "tested" by the rule quoted from the Nebraska case, which by its very terms assumes an ascertainment of the value of the properties of the carriers, unless we are to accept the results of unregulated capitalization in lieu of valuation? Manifestly there is no authority for this and in many instances it would be grossly unjust to do so.

That further capitalization is required, and that investors are to be invited by increased earning power, is an argument which might be

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advanced to warrant any increase of rates, irrespective of any consideration of the reasonableness of such rates.

Rates long maintained do not assume the character of a vested right; if too low the carrier is entitled to an increase, if too high the public is entitled to relief, but a business long conducted under a system of rates voluntarily established and acquiesced in does fasten to such rates a presumption of fairness which renders necessary a closer investigation and more convincing proof of unreasonableness, where whole classes and states are involved, than does a single rate, and these proofs and this consideration in my opinion are wanting in this case. That a holding company with only \$25,000,000 capital should successively buy and control great systems with nearly \$100,000,000 more capital, involves transactions, no matter how honestly conducted, that should have the supervision and sanction of the public, in whose interests these great highways are in law operated. It was said in the record that a stock had paid less than 4 per cent for thirty years, and the query was made as to how the holder was any better off at the end of that time if his holdings had not increased in value. Without undertaking here to state my view as to what would be a reasonable percentage of profit on the value of the property, or the amount of the investment therein, it may be said in answer that the holder has at least had his original investment returned and his dollar is still working for him, and if, as occurred in the case of at least one instance, a hundred-per-cent stock dividend is distributed, the stockholder has two dollars working for him instead of one. It is doubtful, however, whether the man who accomplishes this feat of doubling his capital without further investment deserves as well of his fellow-man as he who makes two blades of grass grow where one grew before.

It is the possibility that stock manipulation will render necessary further tribute, and the word is not misapplied to returns on watered stock, and will cloud the situation on every occasion when higher rates are demanded, that makes inevitable public supervision of these great transactions, fraught with danger as they are. The people can not prosper without the railroads. The railroads can not exist unless the rates are profitable, but the public is entitled to be protected against honest extravagance as well as dishonest management. With the same solicitude for the development and prosperity of the south, as manifested in the opinion, and admitting that these advances will offer no lasting check, it should be borne in mind that the carriers of the southeast have known no such development and prosperity as they have enjoyed under the very rates which in this proceeding the complainants seek to have restored.

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No. 2252.
HANLEY MILLING COMPANY
v.
PENNSYLVANIA COMPANY ET AL.

Submitted June 14, 1910. Decided November 7, 1910.

Upon the facts disclosed by the record complainant is entitled to reparation because defendants negligently failed to comply with complainant's request for reconignment of one carload of hay.

T. J. Hanley for complainant.

A. E. Bryant and *J. B. Sommerville* for Pennsylvania Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Herein \$51.50 reparation is sought for alleged failure to divert to Perth Amboy, N. J., one carload of hay shipped from Warsaw Junction, Ohio, to Allentown, Pa., in July, 1907. The amount alleged to be due complainant is composed of \$14, the difference between \$60, the amount charged on minimum weight of 20,000 pounds at 21 cents per 100 pounds from Warsaw Junction to Allentown, Pa., plus 9 cents per 100 pounds from Allentown to Perth Amboy, and the joint rate of 23 cents per 100 pounds in effect from Warsaw Junction to Perth Amboy; demurrage of \$19, which accrued at Allentown and Perth Amboy; \$9.25, commission on sale of hay; and \$9.25 on account of decline in price of hay. Complaint was filed on March 26, 1909.

Complainant received order from J. M. Farrell to ship one carload of hay to Perth Amboy, and on July 6 or 7, the precise date being in dispute, delivered the car to defendant Cleveland, Akron & Columbus Railroad at Warsaw Junction for shipment to its order at Allentown, "Notify J. M. Farrell, Allentown, Pa." On the following day Farrell telegraphed complainant that the hay should have been sent to Perth Amboy. It was testified that complainant immediately telephoned the Warsaw Junction agent of defendant Cleveland, Akron & Columbus to divert the car to Perth Amboy, and continued to give

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similar verbal requests on each succeeding day until July 11, on which date written request was addressed to the Star Union Line to accomplish the desired diversion. On July 13 complainant received a telegram from the agent of the Star Union Line advising that his orders would be complied with. Later complainant was notified by telegraph that effort had been made to divert the car without success. Complainant replied that car was at Allentown and that it should be forwarded to Perth Amboy, which was done. In the meantime \$3 demurrage accrued at Allentown. After the car arrived at Perth Amboy Farrell refused it, and request was thereafter made that the car be released to Harry G. Gere, Hackensack, N. J. The new consignee not being located at Perth Amboy, the question arose whether the car should be reconsigned to Hackensack, and before it was finally released \$14 demurrage accrued at Perth Amboy and the price of hay had declined. The car was sold net to Farrell, but was disposed of by Gere on commission. It moved from Warsaw Junction to Trinway, Ohio, via rails of the Cleveland, Akron & Columbus Railway Company; from thence to Pittsburg, Pa., via the Pittsburg, Cincinnati, Chicago & St. Louis Railway; thence to Nanticoke via the Pennsylvania Railroad; thence to Allentown, and from there to Perth Amboy via the Central Railroad of New Jersey. After complaint and answers were filed a refund of \$8 on the freight charges was made based on provision in the tariff of the delivering defendant that on reconsigned shipments the charge for a haul of 95 miles, the distance from Allentown to Perth Amboy, should be 5 cents per 100 pounds. This reduces the claimed reparation to \$43.50.

Inasmuch as decline in the market price of a commodity and commission for its sale are not matters within the jurisdiction of the Commission, *Joynes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, the sole question is whether or not defendants negligently failed to comply with complainant's request for reconsignment of the car and therefore damaged it in the sum of \$25.

The tariff of the Cleveland, Akron & Columbus Railway, to which the Pittsburg, Cincinnati, Chicago & St. Louis Railway, the Pennsylvania Railroad, and the Central Railroad of New Jersey were parties, shows basing rate in connection with the Star Union Line, fifth class (applicable to hay, in carloads, minimum weight 20,000 pounds), Warsaw Junction, Ohio, to New York and points taking the same rates, 23 cents per 100 pounds. The Star Union Line Basis for Eastbound Rates shows that the bases for rates contained therein applied between the several carriers participating in the movement of this shipment; shows Allentown, Pa., as taking Philadelphia rates, and Perth Amboy, N. J., as taking New York rates, and instructs

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that shipments to Perth Amboy on the Central Railroad of New Jersey shall be billed through Pittsburg Transfer.

Under the tariff rule of the Central Railroad of New Jersey, as follows:

Diversion in transit for consignments not requiring holding, and where through rates are established, if through rates are in effect from point of shipment to destination, and diversion is accomplished before shipment has reached point to which it was first consigned, and no additional transportation service is required, and not having gone out of route, rate as effective from point of shipment to destination will be applied without additional cost.

Only one diversion will be allowed upon any one shipment. Requests for diversion in transit must be made in writing previous to arrival at the point to which the freight is first consigned—

complainant was entitled to the reconsignment requested, and it is admitted by the defendants that the agent of the Star Union Line who received and acknowledged the reconsignment orders before the car reached Allentown was authorized to receive and execute such orders on behalf of the said defendants. If that order, which was acknowledged by the agent of the Star Union Line on July 13, had been executed before the arrival of the car at Allentown on July 14 no demurrage would have accrued at Allentown.

We find that the complainant made every reasonable effort to effect the reconsignment before the car reached Allentown; that it has paid transportation charges of \$60, demurrage at Allentown \$5, demurrage at Perth Amboy \$14, less refund of \$8; total, \$71. It should have paid transportation charges \$46, and demurrage at Perth Amboy \$14; total, \$60. Complainant is therefore entitled to reparation in the sum of \$11, with interest from August 15, 1907, and such an order will be entered.

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No. 2828.
COLORADO COAL TRAFFIC ASSOCIATION
v.
COLORADO & SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 9, 1910. Decided November 7, 1910.

Apart from the charge of deviation from the long-and-short-haul section, no question is herein involved that was not disposed of in *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 16 I. C. C. Rep., 387; and as to the long-and-short-haul feature, in accordance with the provisions of the fourth section as amended June 18, 1910, no order at this time will be made.

C. W. Durbin for complainant.

John S. Dawson for board of railroad commissioners of the state of Kansas, interveners.

E. E. Whitted for Colorado & Southern Railway Company and Chicago, Burlington & Quincy Railroad Company, interveners.

E. N. Clark for Denver & Rio Grande Railroad Company.

M. L. Bell and *Wallace T. Hughes* for Chicago, Rock Island & Pacific Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This case presents the question of the reasonableness and lawfulness of defendants' rates on bituminous coal from the Walsenburg district in southern Colorado by the defendant lines to destinations on the Chicago, Rock Island & Pacific Railway in Kansas and Nebraska. These rates were investigated and passed upon by the Commission in *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, decided June 8, 1909, 16 I. C. C. Rep., 387, in which the Commission made its report and order dismissing the complaints for the reason therein stated. The case now before us was filed by an association of the same complainant companies which brought the complaints above referred to. Apart from the charge of deviation from the so-called long-and-short-haul rule there is no question here involved that was disposed of in the former case. The Colorado & Southern, & Rio Grande, and Chicago, Rock Island & Pacific compose

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through routes and charge more to certain intermediate stations than to more distant points of destination. They set up in justification for this that the through route composed of the lines of these defendants to the more distant points, Wichita, Kans., for illustration, is about 300 miles longer haul than the distance via the Atchison, Topeka & Santa Fe from the Trinidad mines, near the Walsenburg district, to the same destinations, and that the said rates are made by the short line, the Atchison, Topeka & Santa Fe, which defendants must meet in order to carry any of this traffic from the Walsenburg district to the more distant points. They further justify their deviation from the long-and-short-haul rule by the existence of rates from mines in Oklahoma and Kansas for much shorter hauls to Wichita and the other long-haul distances referred to.

Whatever may be the merit of complainant's contention regarding the long-and-short-haul feature of the controversy, no order at this time will be made by the Commission in respect thereto for the reason that following the language in the first part of the amended fourth section of the act, approved June 18, 1910, prohibiting a greater charge for a shorter than for a longer haul when over the same line in the same direction, it is provided—

that no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

It follows that the greater charge to the intermediate stations here involved than to the more distant ones over the same line in the same direction will upon the expiration of six months from August 17, 1910, become unlawful unless application is made before the expiration of that period to the Commission for authority to deviate from the prescribed rule. Should such application be made it will then be the duty of the Commission to consider the same and investigate the matter. This complaint will therefore be dismissed.

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No. 2967.

PARAGON PLASTER COMPANY

v.

NEW YORK CENTRAL & HUDSON RIVER RAILROAD
COMPANY ET AL.

Submitted July 10, 1910. Decided November 7, 1910.

Rates collected on carload shipments of wall plaster from Syracuse, N. Y., to Boston, Mass., and New York, N. Y., not found unreasonably high or unduly discriminatory. Complaint dismissed.

W. K. Squier for complainant.

Wm. S. Kallman for defendants.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

Complainant is engaged in the manufacture and sale of wall plaster at Syracuse, N. Y., and alleges that defendants' carload rates on this commodity of \$2 per net ton, minimum 40,000 pounds, from Syracuse to Boston, a distance of 350 miles, and \$1.75 from Syracuse to New York, N. Y., a distance of 290 miles, are unreasonable, unjust, and unduly discriminatory and prejudicial to complainant as compared with the rate of \$2 to Boston from Oakfield, N. Y., a distance of 455 miles, and from Garbutt and Wheatland, N. Y., a distance of 445 and 447 miles, respectively, and the rate of \$2 to New York City from Garbutt, Wheatland, and Oakfield, a distance of 375, 377, and 395 miles, respectively.

The wall plaster manufactured by complainant is made of raw material substantially 65 per cent sand and 35 per cent plaster, the latter being purchased at points other than Syracuse, including Oakfield and Garbutt, where it is produced and shipped to complainant in Syracuse. Complainant insists that it ought to have a lower rate from Syracuse on wall plaster for the reason that the carriers had one haul on the raw material into Syracuse, charging and collecting

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therefor a rate of \$1 per ton from Oakfield and Garbutt. The complainant also relies on the fact that the distance by defendants' lines is about 100 miles less from Syracuse to Boston or New York than it is from the points above named.

The rate from Syracuse to New York yields about 6 mills per ton-mile, while the rate from Oakfield and Garbutt yields 5.8 mills; the rate from Syracuse to Boston yields 5.7 mills, whereas the rate from Oakfield or Garbutt and Wheatland to Boston yields about 4.4 mills, but the defendants insist that the rate from the latter-named points is due to the competition of other carriers having a shorter line mileage in connection with the Buffalo, Rochester & Pittsburg Railroad; that these carriers make the rate from those points, which is met by the New York Central, and it is true that the short-line mileage from Oakfield, Garbutt, and Wheatland to Boston by the other carriers referred to is upward of 20 miles shorter than by lines of defendant carriers, while the rate from these places to Boston via all of the lines is \$2.

The facts appearing fail to convince us that the rates complained of are, under all the circumstances, unreasonably high or unduly discriminatory. The complaint must therefore be dismissed and an order will be entered accordingly.

No. 2409.

GRIFFEN H. DEEVES LUMBER COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY
ET AL.

Submitted June 27, 1910. Decided November 7, 1910.

1. The fact that over nine months after shipment moved defendant provided for absorption of switching charge, held not sufficient in itself to justify a finding that the charge was unreasonable.
2. Complaint of unreasonable charges on shipment from Greenville, Mo., to Roodhouse, Ill., and on shipment from Dothan, Ala., to Chicago, Ill., not sustained.

I. W. Preetorius for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

Sidney F. Andrews for Cincinnati, New Orleans & Texas Pacific Railway Company; Central of Georgia Railway Company, and Southern Railway Company.

James O. Jeffery for St. Louis, Iron Mountain & Southern Railway Company.

Blackburn Esterline for Chicago & Alton Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The complaint in this case was twice amended and involves three distinct items, which will be treated in their order. Both complaint and amendments were filed with this Commission within the statutory period.

ORIGINAL COMPLAINT.

The original complaint involves a switching charge from Chicago to Elsdon, Ill., and names the Chicago & North Western as the sole defendant. On May 22, 1907, complainant shipped a carload of lumber from Beaudette, Minn., to Chicago, Ill., reconsigned in transit to Elsdon, Ill. The shipment moved via the Canadian Northern Railway to Minnesota Transfer, thence via the North Western line to

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Chicago, and the Grand Trunk from Chicago to Elsdon. Elsdon is a point within the prescribed switching limits of Chicago. The rate charged was 20 cents per 100 pounds from Beaudette to Chicago plus a \$5 charge paid to the Grand Trunk for switching the car from Chicago proper to Elsdon. These charges were all assessed in accordance with tariffs then lawfully in effect. At the time the shipment moved there was no tariff provision effective whereby the switching from Chicago to Elsdon, performed by the Grand Trunk, would be absorbed by the Chicago & North Western. Complainant alleges that it was the policy of defendant to absorb all switching charges at Chicago on competitive traffic, and that its failure to absorb the switching in this case resulted in the exaction of an unreasonable charge to the extent of \$5, and for that amount it asks reparation.

Effective February 29, 1908, defendant published a tariff providing that it would absorb switching to the Grand Trunk on shipments originating on the Canadian Northern Railway.

The complainant did not appear at the hearing, and no testimony was offered upon which we can base a finding that the failure of defendant to absorb this switching charge resulted in the collection of charges which were either unreasonable or excessive. The fact that over nine months after the shipment moved defendant provided for the absorption of such switching is not of itself sufficient reason for such a finding, and as to this complaint the case will be dismissed.

An order will be issued accordingly.

FIRST AMENDMENT.

The first amendment involves a carload of lumber shipped by complainant on October 10, 1907, from Greenville, Mo., on the line of the Williamsville, Greenville & St. Louis Railway, to Roodhouse, Ill., on the line of the Chicago & Alton Railroad. The shipment moved in connection with the St. Louis, Iron Mountain & Southern Railway to East St. Louis, and charges aggregating \$90.47 were collected to that point. These charges are alleged to have been unreasonable and unjust to the extent that they exceeded \$69.80, based on the rate of 13½ cents to East St. Louis and an allowance of 500 pounds for stakes. Reparation in the sum of \$20.67 is asked. No complaint is made as to the charges that may have been assessed on the movement from East St. Louis to Roodhouse and we are not advised as to the charges beyond East St. Louis.

Defendant St. Louis, Iron Mountain & Southern Railway admits that its tariff in effect at the time provided for an allowance of 500 pounds for stakes. The overcharge caused by the nondeduction of this allowance from the billed weight is 67 cents, and that amount

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should be refunded the complainant by defendant, St. Louis, Iron Mountain & Southern Railway, without any order from this Commission.

It appears that the rate to East St. Louis is 18½ cents, which, based upon a weight of 51,700 (deducting stake allowance), made the lawful charges to East St. Louis \$69.80. At East St. Louis the car was delivered to defendant Chicago & Alton Railroad for transportation to destination. To effect this delivery switching was necessary, for which a charge of \$3 was made. The tariff of the Chicago & Alton then in effect provided that it would absorb such switching. Its failure to do so in this case resulted in an overcharge of \$3, which should be refunded to complainant by that carrier without any order from this Commission.

It further appears that due to improper staking by complainant it became necessary to restake the car in transit. This was done by the initial carrier, Williamsville, Greenville & St. Louis Railway, and a charge of \$6 was made therefor. Defendants also testified that on account of detention of the car while being loaded at Greenville demurrage charges amounting to \$11 accrued. The charge of \$90.47 assessed on this shipment to East St. Louis therefore was arrived at as follows:

Greenville to East St. Louis, 52,200 pounds, at 18½ cents per 100 pounds.....	\$70.47
Switching to Chicago & Alton at East St. Louis.....	3.00
Demurrage at point of origin.....	11.00
Restaking in transit.....	6.00
Total.....	90.47

The charges that should have been collected were as follows:

Greenville to East St. Louis, 51,700 pounds, at 18½ cents per 100 pounds.....	\$69.80
Demurrage at point of origin.....	11.00
Restaking in transit.....	6.00
Total.....	86.80

Making an overcharge of \$3.67 as hereinbefore shown.

As already stated, complainant did not appear at the hearing. With the exception of the overcharge of \$3.67, the charges appear to have been lawfully assessed, and there is no evidence before us upon which we can base a finding that the charges collected from complainant on this shipment were either unreasonable or excessive.

This amendment will, therefore, be dismissed and an order issued accordingly.

SECOND AMENDMENT.

In regard to the second amendment, complainant alleges that it shipped a carload of lumber, weight 48,200 pounds, from Dothan,
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Ala., to Chicago, Ill., upon which charges aggregating \$144.60 were collected, based on a rate of 30 cents per 100 pounds; that the through rate from Dothan to Chicago at the time and via the route of movement was 26 cents per 100 pounds; that a reduction of 2 cents was later made by tariff of the initial carrier, effective February 4, 1908, under the decision of the Supreme Court in the *Tift Yellow Pine case*, and that only 24 cents should have been charged on this particular shipment. Reparation is asked in the sum of \$28.92, the excess collected over the 24-cent rate.

Defendants admit that the Central of Georgia Railroad, the initial carrier, published a tariff naming a through rate of 26 cents from Dothan, Ala., to Chicago, Ill., but state that such rate could not have been applied to complainant's shipment, because it was billed to Roodhouse, Ill., and not to Chicago, and if it did move to Chicago it was reconsigned from Roodhouse and the tariff naming the 26-cent rate did not apply via the route of movement and contained no reconsigning privilege. They allege that the only rate applicable to this shipment was the through rate of 25 cents from Dothan, Ala., to Roodhouse, Ill.; that the tariff naming this rate contained no reconsigning privilege and the movement from Roodhouse to Chicago was subject to the local rate of 5 cents.

The Commission finds the facts to be that at the time of this movement defendants had in effect a tariff naming through rate of 26 cents from Dothan to Chicago, but it did not apply via East St. Louis and Roodhouse. The shipment was billed from Dothan to Roodhouse, and not to Chicago, and moved via lines of defendants, Central of Georgia, Cincinnati, New Orleans & Texas Pacific, and Southern railways, through Louisville, Ky., to East St. Louis, thence via the Chicago & Alton Railroad. The only rate applicable to the shipment from Dothan, Ala., to Roodhouse, Ill., was a through rate of 25 cents, made up, apparently, of 16 cents to the Ohio River and 9 cents beyond. Consequently, if complainant is entitled to any reparation on this shipment, it could only be on basis of the 2-cent per 100 pounds reduction in the rate south of the river, as ordered in the *Tift Yellow Pine case*, which would amount to \$9.64 instead of \$28.92, as claimed.

Prior to the filing of this complaint complainant had pending before this Commission several reparation claims growing out of the 2-cent advance south of the river, and on March 18, 1909, in connection with other shippers and consignees, voluntarily entered into an agreement with certain carriers, among whom were the defendants herein, which agreement was filed with this Commission and provided that complainant and others, parties thereto, agreed to accept 67 per

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cent of the face of their claims on all claims growing out of the 2-cent advance south of the river. It further provided:

It is expressly understood and agreed that the above-named agreement and settlement does include all claims, of whatsoever kind or nature, for reparation on the advance in rates of freight on yellow-pine lumber hereinbefore described, which have heretofore been filed by the above-named attorneys through the undersigned attorneys, or by the undersigned claimants in proper person, from said designated territory, and that each of said firms and claimants does hereby covenant that they will not assert against the said railway companies, or any of them, any other claims on account of reparation for said advance in rates that has not been filed heretofore before the Interstate Commerce Commissioner, or in a court of justice.

This agreement was ratified by complainant on May 14, 1909, and the complaint in this particular case was not filed with the Commission until after July 10, 1909.

Complainant is a corporation doing business in the city of Chicago. The case was set for hearing in that city on June 27, 1910, and complainant was duly notified. The examiner on arriving in Chicago received a letter from complainant dated June 24, 1910, signed by its traffic manager, stating that it was his intention to appear and offer proofs, but owing to an unexpected call from the railway clearing house at Macon, Ga., relative to *Yellow Pine case* he would be unable to attend and asking that arrangements be made for another hearing at some future date. No one appeared for complainant, but defendants appeared and their testimony was received. They moved that the case be dismissed for lack of prosecution. Since the letter above referred to, nothing has been heard from complainant, and it evidently considered it more important to attend to the cases which were being adjusted through the railway clearing house at Macon, Ga.

We are confronted with an unquestioned, positive, voluntary agreement made by complainant with defendants whereby it was stipulated that the agreement and settlement therein determined upon included all claims of whatsoever kind or nature for reparation on the advances in rates of freight on yellow-pine lumber, and that each of the claimants thereby covenanted that they would not assert against the railway companies, or any of them, any other claims on account of reparation for said advance in rates, which claims had not been theretofore filed before the Interstate Commerce Commission or in a court of justice. This claim had not been filed before this Commission or in a court of justice at the time this agreement was executed.

Under all the circumstances, our conclusions are that complainant is not entitled to any reparation, and this amendment will therefore be dismissed.

An order will be issued accordingly.

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No. 2270.
WELLS-HIGMAN COMPANY
v.
GRAND RAPIDS & INDIANA RAILWAY COMPANY ET AL.

Decided November 7, 1910.

1. Joint rate in excess of combination. Reparation awarded.
2. Shipment Metropolis, Ill., to Chicago, Ill., reconsigned to Lawton, Mich. Reconsigning instructions given to carrier not participating in original movement; *Held*, That two separate movements resulted, the first intrastate and the second interstate. Carriers participating in interstate movement not made parties defendant. Complaint dismissed.
3. No overcharge shown for transportation within jurisdiction of Commission.

H. O. Higman for complainant.

A. P. Humburg for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

Complainant is engaged in the manufacture and sale of baskets and fruit packages. Its principal office is in St. Joseph, Mich., while its factory is in Traverse City, Mich. The complaint, filed March 27, 1909, was twice amended and now involves three separate items which will be considered in their order.

ORIGINAL COMPLAINT.

During May, June, and July, 1907, complainant shipped from Traverse City, Mich., to O. O. Karraker, Balcom, Ill., over lines of defendants, Grand Rapids & Indiana Railway, Michigan Central Railroad, and Illinois Central Railroad, five carloads of grape or fruit baskets, the actual weight of which was 115,000 pounds, and freight charges amounting to \$375.70, based on a joint rate of 26 cents, minimum 30,000 pounds, were collected. Correctly figured these charges should have been \$390; an error in assessing charges on the first car resulting in an undercharge of \$14.30. Complainant alleges that at the time and via the route of movement there was in effect a combination rate of 21 cents, made up of 10 cents, minimum 20,000 pounds, Traverse City to Chicago, and 11 cents, minimum 30,000

pounds, Chicago to Balcom. The joint rate of 26 cents is alleged to have been unreasonable and reparation is asked on basis of the lower combination.

Defendants admit the movement of the cars between the points stated. They also admit that the rate from Chicago to Balcom was 11 cents, minimum 30,000 pounds, but assert that prior to May 8, 1907, the rate from Traverse City to Chicago was 15 cents, minimum 25,000 pounds, and that effective on that date it was reduced to 10 cents with the same minimum. This reduction, it is alleged, was necessary on account of water competition from Traverse City to Chicago and was effective only during the season of navigation. Defendants deny that the rate assessed was unreasonable or that complainant is entitled to any reparation.

We find that the shipments were made on May 4, May 7, May 14, June 28, and July 25, 1907, and that 40-foot cars were used. The joint rate from Traverse City, Mich., to Balcom, Ill., was 26 cents, minimum 30,000 pounds. Before the annual opening of navigation, or prior to May 8, the combination rate was 26 cents—15 cents, minimum 25,000 pounds for a 40-foot car, Traverse City to Chicago, and 11 cents, minimum 30,000 pounds, Chicago to Balcom. Effective May 8, the combination was 21 cents—10 cents Traverse City to Chicago, and 11 cents beyond.

The Commission has held that a joint rate between two points that exceeds the sum of the separately established rates between the same points is *prima facie* unreasonable. There was no evidence to rebut this presumption and we are therefore of the opinion and so find, that the joint rate of 26 cents per 100 pounds, minimum 30,000 pounds, charged complainant on its shipments of baskets from Traverse City, Mich., to Balcom, Ill., was unreasonable and excessive in and to the extent that it exceeded the combination in effect at the time the shipments moved.

On the car shipped on May 4, 1907, complainant was charged only \$63.70, though at the 26-cent joint rate the charges should have been \$78, disclosing an undercharge of \$14.30. On basis of the combination of 26 cents then in effect, with minimum of 25,000 pounds to Chicago, the charges would have been \$70.50. There is, therefore, an undercharge of \$6.80.

On the car shipped May 7, 1906, \$78 was collected, while on basis of the 26-cent combination the charges would have been only \$70.50. Overcharge, \$7.50.

On the three cars shipped after the opening of navigation—May 14, June 28, and July 25, 1907—charges of \$78 on each car were collected, aggregating \$234. On basis of the combination of 21 cents, the charges on each car would have been \$58, or an aggregate of \$174.

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Overcharge on the 3 cars, \$60. This makes the total overcharge \$67.50, from which must be deducted the undercharge of \$6.80, leaving a net overcharge of \$60.70, in which amount we find that complainant is entitled to reparation with interest from July 1, 1907. An order will be issued accordingly.

FIRST AMENDMENT.

In the first amendment the defendants are the Illinois Central Railroad and the Michigan Central Railroad.

On September 21, 1908, complainant shipped via line of defendant, Illinois Central Railroad, from Metropolis, Ill., to itself at Chicago, " % Pere Marquette Railway at Riverdale, Ill.," one carload of grape baskets, weight 22,300 pounds. Before arrival of the car at Riverdale, complainant instructed the Pere Marquette to forward it to C. W. Harper, Lawton, Mich. The defendant, Illinois Central, hauled the car to Riverdale, a point in Cook County 19 miles south of Chicago, and there delivered it to the Pere Marquette Railway, which carrier advanced to the Illinois Central its charges for the haul performed and rebilled the car to Lawton, via its own line, Hartford, Mich., and the Kalamazoo, Lake Shore & Chicago Railroad. The shipment did not move over the line of defendant Michigan Central. At Lawton charges amounting to \$76.94 were assessed, made up of \$43.49 to Chicago (or Riverdale) at rate of 19½ cents, and \$33.45 from Riverdale to Lawton at rate of 15 cents. Complainant alleges that the rates assessed were unreasonable and excessive, and states that the rates then lawfully in effect were 10 cents, Metropolis to Chicago, minimum 30,000 pounds, and 10 cents, Chicago to Lawton, minimum 24,000 pounds, on basis of which rates the proper charges would have been \$54, or an overcharge of \$22.94, for which amount complainant asks reparation.

No evidence was offered tending to show that any of the factors of the combination rate charged was in and of itself unreasonable, and the claim for reparation is predicated simply on a lower combination alleged to have been in effect at the time and via the route of movement.

By the terms of the bill of lading issued by defendant Illinois Central only a movement from Metropolis, Ill., to Chicago, Ill., was contracted for, and there was nothing to indicate that the shipment would ultimately find its way outside the state. Complainant's instructions to send car to Lawton were not given to the Illinois Central, which performed the haul to Chicago, but were given to the Pere Marquette, which had nothing whatever to do with the haul to Chicago. The Pere Marquette Railroad advanced to the

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Illinois Central the latter's charges for the service performed and then rebilled the shipment to Lawton. The contract entered into with the Illinois Central for the intrastate transportation to Chicago, care of Pere Marquette at Riverdale, was duly discharged before the interstate movement to Lawton commenced. *Gulf, Colorado & Sante Fe Ry. Co. v. Texas*, 204 U. S., 403.

In passing upon the question as to when a shipment begins to move in interstate commerce, the Supreme Court, in *Coe v. Errol*, 116 U. S., 525, said:

There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movements for transportation from the state of their origin to that of their destination. * * * "Whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced." (*The Daniel Ball*, 10 Wall., 557.) But this movement does not begin until the articles have been shipped or started for transportation from the one state to the other. * * * Until actually launched on its way to another state or committed to a common carrier for transportation to such state its destination is not fixed or certain. It may be sold or otherwise disposed of within the state and never put in course of transportation out of the state. * * * Until shipped or started on its final journey out of the state its exportation is a matter altogether ~~in fieri~~ and not at all a fixed and certain thing.

Two separate and distinct movements, therefore, comprise this transportation from Metropolis to Lawton—an intrastate movement from Metropolis to Chicago and an interstate movement from Chicago to Lawton. Over the intrastate movement we have no jurisdiction. The interstate haul from Chicago to Lawton was performed by the Pere Marquette and the Kalamazoo, Lake Shore & Chicago, neither of which is a party to this complaint. The defendant Michigan Central performed none of the haul.

This amendment will be dismissed and an order issued accordingly.

SECOND AMENDMENT.

The second amendment is against the Illinois Central Railroad, the Pere Marquette Railway, and the Kalamazoo, Lake Shore & Chicago Railroad.

On September 16, 1908, complainant had shipped from Dongola, Ill., via line of defendant Illinois Central Railroad to itself at Chicago, one carload of fruit baskets, weight 24,300 pounds. Before arrival of the shipment complainant instructed the Pere Marquette Railway, at Chicago, to rebill car to W. C. Wildley, Paw Paw, Mich. The Illinois Central hauled the car to Riverdale and there delivered it to the Pere Marquette, which rebilled it to Paw Paw, Mich., via its

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own line, Hartford, Mich., and the Kalamazoo, Lake Shore & Chicago. At destination charges amounting to \$67.55 were collected, based on rate of 18.8 cents from Dongola to Chicago, and 9 cents Chicago to Paw Paw. Complainant alleges that at the time and via the route of movement there was in effect a rate of 10 cents, minimum 30,000 pounds, Dongola to Chicago, and 10 cents, minimum 25,000 pounds, Chicago to Paw Paw, upon basis of which the charges would have been \$54.30, or \$13.25 less than the amount collected. Upon this basis reparation is asked in the sum of \$13.25.

The conditions connected with this movement from Dongola to Chicago are identical with those connected with the movement from Metropolis to Chicago, set forth in the first amendment. For the reasons therein stated, this movement was intrastate and is therefore not within our jurisdiction. Considering the interstate movement from Chicago to Paw Paw via the Pere Marquette and Kalamazoo, Lake Shore & Chicago, both of which were properly joined as defendants in this complaint, we are unable to verify the rate of 9 cents charged. The rate of 10 cents claimed is the fifth class rate, to obtain which, according to Official Classification, the baskets should be "knocked down flat in bundles." The bill of lading shows that these baskets were nested, "handles and covers in bundles separate." There is a third class rate of 19½ cents on "baskets—stave, splint, rattan, or willow, covers and handles taken off and packed separately, baskets nested in bundles." There is nothing in the record to show the material out of which these baskets were manufactured. However, at either the fifth class rate of 10 cents or the third class rate of 19½ cents, the charges would have been greater than those actually collected on basis of 9 cents. This amendment will therefore be dismissed and an order issued accordingly.

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No. 2569.

S. SHOECRAFT & SON COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted July 2, 1909. Decided November 7, 1910.

Following *Blinn Lumber Co. v. Southern Pacific Co.*, 18 I. C. C. Rep., 430, consideration of this claim is barred by the statute of limitations, and complaint is dismissed.

L. M. Shoecraft for complainant.

Blewett Lee for Illinois Central Railroad Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Between February 21 and March 12, 1907, complainant made five shipments of cement from La Salle, Ill., to Clinton, Iowa, and Camanche, Iowa, the total weight of which amounted to 350,740 pounds, and the defendants charged and collected upon the same the sum of \$275.61, which charges were based upon a rate of 7.83 cents per 100 pounds. There seems to be a straight overcharge of 98 cents. Reparation is asked, and the case is submitted upon the pleadings.

It appears that at the time of the delivery, extending from February 26 to March 18, 1907, the carriers only exacted charges based upon a rate of 6.24 cents per 100 pounds; that some two years after this, namely, April 17, 1909, additional charges were collected on the basis of 7.83 cents, which was, in fact, the lawful published rate in effect at the time the shipments moved. This petition was filed June 9, 1909.

Following *Blinn Lumber Co. v. Southern Pacific Co.*, 18 I. C. C. Rep., 430, we hold that this claim is barred by the statute of limitations. In the *Blinn case* the Commission decided that the statute began to run from the time when it became the duty of the carrier to collect its lawfully published rate, and the fact that additional charges might later be collected would not prevent the running of the statute from the time when payment should have been required.

The complaint will be dismissed.

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No. 2976.
WEBSTER GROCER COMPANY
v.
CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted June 29, 1910. Decided November 7, 1910.

Joint rate in excess of sums of separately established rates. Combinations determined and reparation awarded.

G. M. Stephen for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

William Ellis for Chicago, Milwaukee & St. Paul Railway Company.

F. H. Wood for Chicago & Eastern Illinois Railroad Company.

REPORT OF THE COMMISSION.

COCKRELL, *Commissioner*:

Between January, 1908, and August, 1909, complainant shipped from Plymouth, Wis., to Danville, Ill., via the lines of defendants, Chicago & North Western Railway and Chicago & Eastern Illinois Railroad, 8 less-than-carload lots of cheese, aggregating 14,249 pounds, upon which freight charges amounting to \$63.93 were collected.

Between March, 1908, and September, 1909, complainant shipped from Plymouth, Wis., to Danville, Ill., via lines of defendants, Chicago, Milwaukee & St. Paul Railway and Chicago & Eastern Illinois Railroad, 27 less-than-carload lots of cheese, weighing 37,998 pounds, upon which freight charges aggregating \$181.27 were collected. On all of these shipments the charges were based on joint class or commodity rates, varying from 40.1 cents to 52½ cents per 100 pounds.

Complaint alleges that such charges were unreasonable and excessive to the extent that they exceeded charges based on a combination rate of 31.35 cents per 100 pounds, alleged to have been in effect via the Chicago & North Western, complaint further asserting that that rate would have been a just and reasonable rate via the Chicago, Milwaukee & St. Paul, all conditions via both routes being the same, except that the haul is 25 miles less via the latter. Reparation in the sum of \$19.26 is asked on shipments moving via the Chicago & North Western, and in the sum of \$62.15 on shipments via the Chicago, Milwaukee & St. Paul.

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Defendants admit the movement of shipments as alleged, but deny that the charges assessed were unreasonable or excessive.

The complaint was first filed with this Commission on November 18, 1909, and asked for reparation to basis of combination rate of $37\frac{1}{2}$ cents, made up of 12 cents to Milwaukee and $25\frac{1}{2}$ cents from Milwaukee to Danville. Later, complaint was amended asking for reparation to basis of the 31.35 combination, made up of 5.85 cents to Sheboygan, Wis., and 25.5 from Sheboygan to Danville.

We find that up to April 6, 1909, a through class rate of $52\frac{1}{2}$ cents was applicable via either the Chicago, Milwaukee & St. Paul or the Chicago & North Western. At the same time there was also effective a combination amounting to 40.1 cents, made up of 15 cents to Milwaukee and 25.1 cents, Milwaukee to Danville. This combination was applicable via both the Chicago, Milwaukee & St. Paul and the Chicago & North Western, and, effective April 6, 1909, was published as a through rate. That complainant is entitled to reparation at least to basis of the 40.1-cent combination is clear, but as claim is predicated on the 31.35-cent combination, it will be well to review the rate situation between the points involved so far as relates to possible combinations.

The combination of $37\frac{1}{2}$ cents originally contended for was based on rate of 12 cents to Milwaukee and $25\frac{1}{2}$ cents beyond, via either the Chicago, Milwaukee & St. Paul or the Chicago & North Western. However, the 12-cent factor of this combination, while published by defendants, applied only as a proportional rate on shipments destined to points east of the Illinois-Indiana state line. Danville is not so located, and the 12-cent rate could not be applied on shipments destined to that point. Furthermore, the $25\frac{1}{2}$ -cent factor was not applicable to Danville, because, while applying to Terre Haute and Cayuga, Ind., there was no provision in the tariff that Danville would take the Terre Haute or Cayuga rate, although it is intermediate to those points.

The combination of 31.35 is based on rate of 5.85 cents, Plymouth to Sheboygan and 25.5 cents Sheboygan to Danville. The rate of 5.85 cents is a distance rate published in tariff of defendant Chicago & North Western, and applied on cheese, any quantity, for *concentration* between stations on the Chicago & North Western Railway in the state of Wisconsin, to be reshipped via that road. In the absence of concentration, therefore, this rate can not be used in constructing a combination on Sheboygan. The only rate between Plymouth and Sheboygan then in effect was a class rate of 12 cents, and this is the rate that would have to be used. The $25\frac{1}{2}$ -cent rate from Sheboygan to Danville applied without condition, and, therefore, made the combination then effective $37\frac{1}{2}$ cents. All of the shipments via the Chicago & North Western passed through Sheboygan, but that point

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is located only on the rails of the Chicago & North Western and is not reached by the Chicago, Milwaukee & St. Paul. The combination based on that point had no application via the Chicago, Milwaukee & St. Paul, and can be considered only with reference to shipments moving via the Chicago & North Western. Effective April 1, 1910—from seven to twenty-seven months after these shipments moved—defendants published a through commodity rate of 31.35 cents between Plymouth and Danville, applicable via either the Chicago & North Western or the Chicago, Milwaukee & St. Paul.

On the shipments via either route the complainant is entitled to reparation based on the combination then in effect via the route of movement. Via the Chicago & North Western such combination was 37½ cents, but via the Chicago, Milwaukee & St. Paul the only combination was 40.1 cents. The complaint is brought upon purely technical grounds, i. e., that the through rate exceeded the combination of locals. We can not apply to shipments moving via the Chicago, Milwaukee & St. Paul the combination effective only via the Chicago & North Western. While in its petition complainant alleged that no higher charge should have been exacted via the Chicago, Milwaukee & St. Paul than via the Chicago & North Western, this contention was denied by the defendants, and no evidence was offered by complainant to prove that the conditions via both routes were analogous. The reasonableness of the rates was not in issue other than on the technical ground referred to, and the fact that from seven to twenty-seven months after these shipments moved defendants published a through commodity rate equal to the concentration rate from Plymouth to Sheboygan and the through rate from Sheboygan to Danville, both of which rates were effective only via the lines of the Chicago & North Western, is not, of itself, sufficient ground to base a finding that at the time these shipments moved such a charge would have been reasonable and just via either of the before-mentioned routes.

Our conclusions, therefore, are that as to the shipments via the Chicago & North Western the joint rates charged were unreasonable and excessive in and to the extent that they exceeded the then available combination via that route, 37½ cents, and complainant is entitled to reparation in the sum of \$10.50, with interest thereon from April 1, 1909; that as to the shipments via the Chicago, Milwaukee & St. Paul the joint rates charged were unreasonable and excessive in and to the extent that they exceeded the then available combination via that route, 40.1 cents, and complainant is entitled to reparation in the sum of \$28.90, with interest thereon from January 1, 1909.

An order in accordance with these findings will be issued.

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No. 3400. (Sub-No. 8.)

[INVESTIGATION AND SUSPENSION DOCKET No. 15.]
IN THE MATTER OF THE INVESTIGATION AND SUSPENSION OF CERTAIN DEMURRAGE SCHEDULES.

Decided November 14, 1910.

The Commission recommends that for six months following December 1, 1910, the free time upon lumber and forest products, coal, grain, and grain products be extended from forty-eight hours to seventy-two hours, provided, however, that the application of the average rules shall only be allowed upon a forty-eight hour basis. Before the expiration of that period the Commission will be able to intelligently determine what commodities, if any, should be given a longer free time than the standard forty-eight hours.

Louis D. Brandeis for the shippers.

Ernest S. Ballard for Boston & Albany Railroad Company.

F. A. Kistler and *Hugh A. Chaplin* for Bangor & Aroostook Railroad Company.

E. B. Flinn for Springfield Electric Railway Company.

Charles J. Hamblett for Boston & Maine Railroad.

E. W. Lawrence for Rutland Railroad Company.

Edward D. Robbins and *Frank A. Farnham* for New York, New Haven & Hartford Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

In November, 1909, the National Convention of Railway Commissioners adopted a code of uniform demurrage rules. This action was based upon extensive investigation and thorough discussion, participated in by railroad commissions, commercial organizations, representatives of railroads, and individual shippers from all parts of the country. The deliberations of the committee having the matter in charge were presided over by a member of the Interstate Commerce Commission, who submitted the report recommending the adoption of the code.

This Commission believing it to be of first importance that uniform demurrage rules should be observed throughout the United States,
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except in so far as local conditions might interfere, recommended carriers to apply this uniform code to interstate business, and following this recommendation the railroads of New England filed schedules with this Commission making these rules effective October 1, 1910. As soon as these tariffs were filed the Commission began to receive numerous vigorous protests against the putting into effect of these schedules, claiming that conditions in New England differed from those elsewhere, and that the establishment of these rules would work much hardship. Desiring to proceed with great caution, we suspended the effective date of these tariffs for thirty days and assigned the matter for hearing at Boston on October 17 last.

Two members of the Commission attended that hearing, which extended over two days. We found an earnest and aggressive sentiment against these new demurrage regulations, begotten, without doubt, of an honest belief that their operation would entail much hardship. In the past New England has enjoyed a demurrage free time of ninety-six hours, which is reduced by these rules to forty-eight hours. The testimony before us indicated that the average shipper had not looked beyond this fact, and believed that the only effect of these new rules was to divide in half his free time.

In point of fact, this is not true. The new rules contain many provisions of advantage to the shipper not found in the schedule at present in force. They contain, for example, a bunching provision, relieving against hardship from the irregular delivery of cars; an average provision by which shippers may gain, through the prompt unloading of cars, credits which are applied against overtime in the unloading of other cars; a weather provision which is of much importance in New England. It is our belief that the new rules, applied in a proper spirit, will result in less inconvenience to and in the payment of less demurrage charges by the shippers of New England than under the old regulations.

We also found certain local conditions in New England which differed to some extent from other sections of the country, but it is uncertain, from the testimony given, just how far, if at all, these conditions require a departure from the rules elsewhere in effect. We feel that, in the main, New England should be able to operate under the same demurrage code which prevails in other parts of the United States and in the Dominion of Canada; but we desire to be certain of our ground before taking final action.

From a consideration of the entire situation we think that the first necessity is the establishment of a demurrage officer in this territory who will give construction to these rules and enforce them impartially and fairly as between the shippers and the carriers. We have to this end suggested to the carriers the name of a man in whom we have

confidence, to whom doubtful questions will be referred by both carriers and shippers. This officer will have access to the carriers' records and will report the working of the rules to the Commission.

The effective date of these schedules has been a second time suspended until December 1, 1910. We recommend that for six months following that date the free time upon lumber and forest products, coal, grain, and grain products be extended from forty-eight hours to seventy-two hours, provided, however, that the application of the average rule shall only be allowed upon a forty-eight-hour basis. Before the expiration of that period the Commission will be able to intelligently determine what commodities, if any, should be given a longer free time than the standard forty-eight hours.

The shippers of New England should understand that this uniform demurrage code was only adopted after the most careful consideration. The business of a railroad is transportation, not storage. The service of a railroad can not be efficient unless its cars are promptly released. If a car is detained by a particular shipper for a longer period than is necessary for loading or unloading, the efficiency of the railroad is to that extent diminished, and every other shipper is to the same extent prejudiced. We urge that shippers cooperate in giving a fair and intelligent trial to these regulations. If it turns out that under the peculiar conditions of New England their application results in undue hardship, the rules themselves will be modified; the present recommendations are understood, however, to be purely tentative, awaiting fuller and more precise information upon the New England situation.

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No. 3124.

T. A. RICKEL

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.

Submitted June 28, 1910. Decided October 10, 1910.

Without considering the question of the legality of the use by interstate carriers of so-called exchange scrip books, the Commission holds that because of the defects of the tariff under which such books were sold by the defendant the provision therein limiting the right of the purchaser to demand redemption of unused coupons to a period of eighteen months was not valid. Reparation awarded the complainant for his unused coupons, although presented for redemption after the said period had expired.

G. M. Stephen for complainant.

J. L. Coleman for defendant.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

On December 3, 1907, the complainant paid the sum of \$40 to the defendant for what is known as an exchange scrip book. Instead of entitling the holder to a mile of transportation the several coupons in the book represent a value of 5 cents in the purchase of any passenger ticket that may be required for traveling over the lines of the defendant and numerous other lines in the New Mexico-Arizona-Texas territory. In exchange for any such ticket the regular legal fare is collected by the carrier, not in money but by detaching from the scrip book enough coupons to make, at their face value, the amount of the regularly published fare. When all the coupons in the book have thus been exhausted and the cover is returned to the joint scrip bureau organized for this purpose by the carriers in question, the original purchaser, according to the contract appearing on the book as well as in the tariff under which it is sold, is entitled to a cash refund amounting to the difference between the price paid for the book and the transportation actually

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had by the purchaser, computed not on the basis of the published legal fares but on the basis of certain "net fares" provided in the tariff and which are less than the regular published fares for the same transportation. There is also some provision in the contract and in the tariff for the redemption of any unused coupons. It is our understanding however that a redemption of unused coupons is adjusted on the basis of the published legal fares for the transportation actually had by the purchaser, and not on the basis of the so-called net fares for such transportation.

The complainant having purchased such a scrip book, used it to secure a certain ticket or tickets, the value of which at the published fares, as is agreed upon the record, was \$7.95. Through an inadvertence the book was afterwards mislaid. When found some time later the complainant presented it to the defendant and demanded that the unused coupons remaining in it be redeemed on the basis of the regular published fares for the transportation actually had by him. The refund was refused on the ground that the tariffs required the presentation of covers for a refund, or coupons for redemption, within eighteen months after the date of sale and not later.

The so-called tariff under which the scrip book was sold was wholly irregular and not in conformity with requirements of the act with respect to the publication and filing of rates and fares. It will not be necessary to describe its defects in detail. It will suffice to say that although on its face purporting to become effective on March 1, 1906, the schedule or pamphlet explanatory of the scrip books and the basis of their sale was not filed with the Commission until December 26 of that year. It bears no I. C. C. number and is vague, uncertain, and indefinite in its terms. The circular fails also to make any reference to another pamphlet filed with the Commission on the same date, and even more indefinite in form, in which appear the rules purporting to govern the use and redemption of such books, including the eighteen-month rule upon which the defendant bases its refusal to redeem the unused coupons in the complainant's book.

There may be some question as to the legal propriety of the use by carriers of books which do not seem to involve the sale of transportation, but the sale of a medium for the subsequent purchase of transportation at a discount from the regularly published rates. Having received money for transportation that was not furnished to the complainant either in the form of tickets or in the form of actual service, there may be some question also as to the right of the defendant to set up a period of limitation within which the purchaser of such books must demand the return of the money for which

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a service has not been actually rendered. But these questions were not argued in this proceeding, and we do not now enter upon their consideration. Confining the ruling to the special facts of the case and to the defects in the tariff purporting to set up the period of limitation, we find that the defendant has in its possession funds to the amount of \$32.05 in excess of any transportation that has been furnished to the complainant at the regular published legal fares, and this amount we find that the complainant is entitled to recover of the defendant with interest from October 1, 1909.

An order will be entered in accordance with these conclusions.

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No. 3251.

ORANGE GROCERY COMPANY

v.

MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL

Submitted April 23, 1910. Decided November 7, 1910.

Rate of 55 cents per 100 pounds collected on mixed carload of groceries from Orange, Tex., to Eunice, La., a distance of 105 miles, not found unreasonable, and reparation denied.

F. W. Hustmyre for complainant.

Baker, Botts, Parker & Garwood for defendants.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

Complainant shipped on April 7, 1908, from Orange, Tex., to Eunice, La., via the lines of defendants a carload of mixed groceries weighing 38,875 pounds. On this shipment they were quoted and paid a rate of 10 cents per 100 pounds, aggregating \$38.88, but were subsequently advised by defendants that the rate quoted was in error and that the rate of 10 cents did not become effective until April 14, 1908, and that therefore the legal rate applicable to this shipment was 55 cents per 100 pounds. Accordingly, thereafter, to wit, on April 1, 1910, complainant paid to defendants the sum of \$174.94, alleged to be due as the difference between the rate of 10 cents quoted and paid and the rate of 55 cents lawfully in effect at date of shipment. It is this amount which complainant now seeks to recover.

By their joint answer defendants admit the allegations of the complaint and join with complainants in a stipulation to submit the case for determination upon the pleadings and request authority to make refund in the amount claimed.

The rate of 10 cents per 100 pounds became effective April 14, 1908, and expired June 3, 1908. The previous rate had been 55 cents. The present rate by one line is apparently 55 cents and by the other line 70 cents. The distance is 105 miles. It is apparent that the rate of 10 cents was abnormal and was made for some special purpose.

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We can not find upon the record that a rate of 10 cents was at that time or is now a just and reasonable rate to be charged for this service. This Commission can not award reparation unless it is prepared to find that the rate upon the basis of which reparation is given was a just and reasonable rate to be applied at the time the shipment moved. To award this reparation in favor of this complainant might amount to a gross discrimination in its favor against other shippers.

We must therefore, upon this record as it stands, decline to award the reparation and dismiss the complaint.



No. 2738.
SOLOMON BALLIN
v.
SOUTHERN PACIFIC COMPANY.

Submitted October 4, 1910. Decided November 7, 1910.

The record herein fails to disclose the alleged undue discrimination. Complaint dismissed.

No appearance for complainant.

F. C. Dillard and *F. L. Williams* for Southern Pacific Company.

REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

Elko is a station upon the line of the Southern Pacific from Ogden to San Francisco, situated east of Reno, Nev. Complainant desired to go from Elko to San Francisco and return, and applied to the station agent at Elko for a round-trip ticket. The agent had no such ticket, and so informed the complainant; but he further stated to the complainant that there was in effect from Reno to San Francisco a round-trip rate, and suggested to the complainant that he should buy a round-trip ticket from Elko to Reno and there purchase a round-trip ticket from Reno to San Francisco. The complainant at-

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tempted to carry out the suggestion of the ticket agent and purchased a ticket from Elko to Reno and return, but the train upon which he was riding did not stop long enough at Reno to permit him to purchase a round-trip ticket, and he was compelled to pay his fare to San Francisco and purchase tickets from San Francisco back to Reno. He brings this complaint to recover of the Southern Pacific Company the difference between the amount paid by him and the amount which he would have been compelled to pay had he been able to purchase a round-trip ticket from Reno to San Francisco.

The Southern Pacific had in effect from Elko to San Francisco no round-trip rate, and the complainant was not therefore entitled to a round-trip ticket from that point to San Francisco and return. The only way in which he could obtain passage from Elko to San Francisco and back was by paying the one-way fare to San Francisco and the one-way fare from San Francisco, and the ticket agent of the Southern Pacific at Elko had no authority to bind the company by any suggestion of the sort which he made.

The complaint further alleges that round-trip rates ought to be established from Elko to San Francisco and other California points, and prays that such rates be established by the Commission.

The complainant did not appear and was not represented upon the hearing. While it is possible that the Southern Pacific by maintaining a permanent round-trip fare from Reno and declining to maintain a corresponding rate from Elko might unduly discriminate against the latter locality, there is nothing upon this record as presented which shows such discrimination in the present case, and we have not felt called upon to further investigate this matter of our own motion.

The complaint will therefore be dismissed.

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the contention that its shipments have been proven to be purely soda ash without the admixture of any other ingredient, and that the restoration of previous rating is therefore warranted. In brief and argument it contends that this article has been found unsuitable for household purposes, and therefore does not compete with soap, soap powders, and other ordinary cleansing compounds. Among the exhibits are labels and circulars containing directions for and advertising the use of the commodity in question for washing dishes, cleaning clothes, blankets, carpets, and rugs, polishing glassware, scrubbing painted and unpainted surfaces, etc., but these are stated to have been put out in an unsuccessful effort to introduce the commodity for household use.

In framing classifications and rates, no one consideration is controlling. Bulk, value, liability to waste or injury in transit, weight, form in which tendered, etc., must be taken into consideration. Significant among such considerations in this case is the value of the commodity as shipped. It is in evidence that commercial soda ash, the rating of which is sought for Wyandotte Cleaner & Cleanser, sells for from 85 cents to \$1.20 per 100 pounds at the works, while Wyandotte Cleaner & Cleanser sells at the works for about \$2.25 per 100 pounds.

Prior to filing formal petition complainant's attorney informally addressed the Commission, challenging the advanced rating fixed by defendants, and requesting expression of views relative thereto. The Commission expressed in effect the opinion that if Wyandotte Cleaner & Cleanser were to be transported as "soda ash," and at the soda ash rates, the shipments should be so designated in billing and in marking, or at least that this designation should be included as well as the trade name. To this counsel replied that while willing to insert in the bills of lading "soda ash (trade name Wyandotte Cleaner & Cleanser)," complainant demurred to the proposition to show such designation on the packages. It was stated that complainant discovered the uses to which a uniform quality of soda ash of low alkali test could be put; that, in fact, complainant practically standardized this particular grade of soda ash and built up its business therein under the name of Wyandotte Cleaner & Cleanser, and that to label its shipments as suggested by the Commission would ruin complainant's business as inevitably as would the exaction of higher freight rates. The Commission, however, adhered to its expressed view that these considerations could not justify according this commodity the benefits of a low rating as soda ash unless the shipments were in fact soda ash and were shipped and designated as such.

Nothing in the record now persuades us that that view was erroneous or that it should be changed. Complainant argues that if the

shipments are in fact soda ash and are accorded the rates applicable to soda ash no misrepresentation or misbilling is present if they are billed and sold as Wyandotte Cleaner & Cleanser. We can not accept that view. We think that if a simple commodity is given a trade name which does not disclose its real nature and is shipped and sold in competition with other compounds intended for and put to the same uses, it should be rated the same as those other compounds, and that in order to be entitled to the lower rating it should be shipped openly as the simple commodity which it in fact is.

If the theory here contended for by complainant were to prevail the door would be opened for unjust discrimination and undue prejudice. The Commission has held that incorrect dating of bills of lading by a carrier was unlawful because it was used by the shipper as a fraud upon the consignee. The commodity transported was just what the bill of lading represented, but the price of sale was affected by misdating the bill of lading. It was a species of misbilling or misrepresentation that was repugnant to the spirit and purpose of the act.

This case is strongly analogous to *Andrews Soap Co. v. P. C. C. & St. L. Ry.*, 4 I. C. C. Rep., 41. There it was stated:

In this case, if the soap of the complainant, which is represented as a toilet soap, is in fact of no greater value or cost of production than the common soap with which it comes in competition, the discrimination complained of in respect to the classification and rate could readily be obviated by putting it on the market and having it transported as a common or laundry soap. But in answer to this suggestion it was said on the hearing that the trade name of the complainant's soap is essential to the selling of the product, that it must be sold as a toilet soap, and that the complainant can not afford, by extensive advertising to create the demand for it that is necessary to make its manufacture profitable, except as a toilet soap.

And:

A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representations under which it is sold, in order to give it a lower rate corresponding to its actual value.

In the argument defendants' counsel asserted that even if this commodity were in fact simple soda ash, and so marked and designated when tendered for shipment, the defendants could properly assess the fifth class rates upon such shipments if they were intended and used for cleaning and cleansing purposes. To this suggestion we can not assent. We adhere to the view that the carrier may not assess its charges upon the basis of the use to which the commodity transported is put. Defendants may not say that they will transport soda ash at a certain rate, but that if it is used for a certain purpose it shall bear a higher rate or enjoy a lower rate. Complainant may

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not demand or be accorded the soda-ash rate except upon shipments of soda ash designated as such when tendered for shipment, and so marked if marked at all. We see no objection to adding the trade name to the description of the commodity in marking packages tendered for shipment. For example: "Soda ash (trade name Wyandotte Cleaner & Cleanser)" or "Wyandotte soda ash," and we see no reason for increasing the transportation charges because of such marking.

It appears that the Wyandotte Cleaner & Cleanser is used principally where soap preparations are not desirable; for example, in cleaning milk cans; but it competes as far as it is able to compete with cleaning and cleansing powders and preparations in general, as is shown by its name and the statements made in advertising it. Complainant states that the Wyandotte Cleaner & Cleanser competes with soda ash and other alkaline preparations which take soda-ash rates, and refers especially to Soda Crystals and to Snow Flake Crystals of Soda, which are stated to be soda in another form, and to be accorded soda-ash rates. It appears, however, that this commodity is provided for in tariffs in a group of articles taking certain rates, among which are "Soda Ash," "Caustic Soda," "Crystal Soda," etc., and that when tendered for shipment it is represented to be and is labeled "Soda Crystals" or "Snow Flake Crystals of Soda."

The duty rests upon the carrier to clearly and definitely state its rates and charges in its tariffs, and it is prohibited from accepting either more or less or different compensation for transportation than that so stated. The duty rests upon the shipper to clearly state and truly represent the character of his shipment, and he is entitled to no rate except that shown in the carrier's schedule for the transportation of the commodity as tendered for shipment.

Assuming that the views herein expressed will be accepted and applied we shall not now enter any order, but shall hold the case for such further proceedings and order, if any, as may be found to be necessary.

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No. 2595.
J. W. JOHNSON COMPANY
v.
CLYDE STEAMSHIP COMPANY ET AL.

Submitted June 29, 1910. Decided November 7, 1910.

Reparation awarded on various less-than-carload shipments of cotton-shoddy lining from Philadelphia, Pa., to Chicago, Ill.

G. M. Stephen for complainant.

Sidney F. Andrews for Cincinnati, New Orleans & Texas Pacific Railroad Company and Southern Railway Company.

Claudian B. Northrop for Southern Railway Company.

H. E. Maynard for Clyde Steamship Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

Between the 15th day of January and the 28th day of March, 1907, the complainant shipped 51 bales of cotton-shoddy lining weighing 22,669 pounds over the lines of the defendants from Philadelphia, Pa., to Chicago, Ill., upon which there was charged and collected the amount of \$138.92, which was supposed to be based upon a rate of 61 cents per 100 pounds, though there seems to have been an error in extension, as only \$138.29 should have been collected. The complainant claims that a just and reasonable charge for the transportation involved should have been 45 cents per 100 pounds, and asks reparation in the amount of \$36.91. The 61-cent rate charged was applicable to dry goods in bales or boxes (any quantity) and the 45-cent rate claimed was applicable to cotton piece goods (any quantity), though since the movement it has been applied to the commodity in question. The question involved is one of classification, the complainant asserting that the cotton-shoddy lining should have taken, as it now does, the rate applied to cotton piece goods. Cotton-shoddy lining is used for the lining of horse blankets and is made of cotton of a very low grade, including sweepings and linters. One of the defendants admits that the traffic in question should have taken a 45-cent rate. Reparation is awarded in the amount claimed, with interest thereon from March 21, 1907. The matter was presented informally to the Commission on November 19, 1908.

An order will be drawn in conformity with this finding.

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No. 2834.
PONCHATOULA FARMERS' ASSOCIATION, LIMITED,
v.
ILLINOIS CENTRAL RAILROAD COMPANY.

Submitted May 7, 1910. Decided November 14, 1910.

1. Defendant's rule authorizing carload rates on mixed carloads and providing that any deficit in minimum shall be made up by adding to the weight of the highest rated article, found unreasonable and ordered amended to provide that deficit in weight shall be made by adding to the weight of the heaviest loaded article.
2. Minimum weight of 18,000 pounds on strawberries from Ponchatoula, La., to Chicago, Ill., unreasonable in so far as it exceeds 17,000 pounds.
3. Carload rate of 58½ cents per 100 pounds on lettuce from Ponchatoula, La., to Chicago, Ill., unreasonable in so far as it exceeds 55 cents.
4. Defendant's "owner's-risk" rule was vague and misleading and warranted complainant's objection. Rule as corrected, effective June 6, 1910, appears to remove cause of complaint.
5. Many other matters complained of are either beyond the Commission's jurisdiction or are not presented on any basis that would authorize the Commission to grant relief.

*Edward G. Davies and William E. Hicks for complainant.
Sidney F. Andrews and R. Walton Moore for defendant.*

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

The Ponchatoula Farmers' Association, Limited, of Ponchatoula, La., an association of truck farmers chartered under the laws of Louisiana, brings this complaint on behalf of its members, who are engaged in growing strawberries and vegetables for the early Chicago market. One of the functions of complainant organization is to combine small shipments so as to obtain carload rates. The organization charges the less-than-carload rates on all shipments tendered it whether by stockholders or non-members, pays the freight thereon at carload rates, loads the cars, meets all expense in connection with loading, and divides the saving thus made among its active members on the basis of the respective shipments of each. The shipments made

by the association are practically all consigned to Edward G. Davies, Chicago, Ill., and defendant, Illinois Central Railroad Company, is the only carrier participating in the movement, Ponchatoula being located on its line about 48 miles north of New Orleans.

Some years ago when the movement of strawberries and early vegetables from Ponchatoula to Chicago was inaugurated the shipments moved via express; as the competition of vegetables from other sections increased and prices decreased the Ponchatoula farmers resorted to the less-than-carload freight service of defendant. Still later, for various reasons, complainant association was organized and began to forward the produce at the carload rates. In connection with this traffic defendant put in effect certain rules not usually found in tariffs dealing with the ordinary movement of freight. These rules as well as certain practices of defendant have led to confusion as to what are the liabilities and duties of the carrier and shipper, respectively, and were largely responsible for the filing of this complaint.

The complaint, as shown by the whole record, is against the rates, minima, and rules of transportation governing the movement of produce from Ponchatoula to Chicago, certain practices of defendant with respect thereto, and also embraces many matters which are beyond the jurisdiction of this Commission. Specific objection is made to defendant's so-called "owner's-risk" rule and the practice of requiring "shipper's load and count," while complainant asks that defendant be required, among other things, to do the following:

To furnish a car shed at Ponchatoula under which products of complainant can be loaded without damage from the weather.

To furnish cars that are in proper repair and in a clean, dry, and suitable condition for carrying the class of goods shipped by complainant.

To transport the products of complainant without delays, transfers, jolting, and rough coupling, which are fatal to the value of tender and perishable products.

To promptly pay complainant for goods damaged without forcing complainant to wait indefinitely and perhaps finally spend more for the collection of the claims by law than the goods are worth.

To load, strip, and brace cars without charge, or to compensate complainant for so doing.

The Commission is further requested to prescribe a classification, grouping analogous vegetables, and prohibit defendant from applying different rates on analogous vegetables, and to construct a tariff for complainant's traffic which will include the rates, classifications, and all instrumentalities of transportation and all services in connection therewith so far as relates to the duties and obligations which the law imposes upon common carriers.

The Commission assumes no jurisdiction over such subjects as jolting, prompt settlement of damages, and polite treatment, while such subjects as loading sheds, clean and dry cars, and the stripping and bracing of cars are not here presented upon an allegation of discrimination, nor does the record present them upon any basis which would authorize us to grant relief under the law. However, we invite defendant's attention to the very earnest and persistent manner in which these features of the case have been urged. It was testified that one of the reasons for forming complainant organization was to secure proper handling of perishable fruits and vegetables at loading, as the handling of less-than-carload shipments by the employees of carriers had caused great loss and damage.

The case was fully presented at the hearing, which was largely attended by members of the association; it has been argued at length, and a careful examination of the record has been made with a view to segregating from the many issues raised those over which we have jurisdiction.

With regard to the reasonableness of the rates on fruit and vegetables in carloads from Ponchatoula to Chicago, one of the matters of complaint is that the rates charged remain unchanged, while the value of the products moving under them fluctuates widely. For instance, the freight charge on a box of beans is the same when the market price of the commodity is 35 cents as when the market price is \$2.50. The freight charge on a crate of strawberries is the same when the market price is 50 cents as when it is \$3. These fluctuations, peculiar to such early products, are marked and rapid and are due to quite other causes than freight rates. Resultant thereupon, the carrier's risk at some seasons is increased, while at other seasons it is decreased, the rates always remaining the same. To adjust these rates to correspondingly fluctuate with these values is manifestly impossible. The sole duty of the carrier is to provide a rate that is reasonable for the service performed.

Several witnesses, members of complainant organization, engaged in producing vegetables at Ponchatoula, testified as to the poor financial returns they were deriving from their business and alleged that their condition was due to the absorption of profits by freight rates. These shippers apparently entirely misconceive the powers of the Commission in fixing a reasonable rate. The Commission can not lawfully base rates upon the profits derived in a particular business. It might be that in a favorable season the farmers of Ponchatoula would receive large and generous returns from their labors, but this fact would not justify the carriers in charging for transporting the vegetables to market more than a reasonable rate for the service performed. In another season the market prices might be such that there would be little or no profit in the business, yet such fact would

not justify the Commission in requiring the carriers to transport the produce at a less rate than would be reasonable for the service performed. The law does not require the carriers to regulate the price of transportation upon the basis of profits to the shipper, and in authorizing the Commission to fix reasonable rates the law presumes that the measure of reasonableness will be based upon all the many elements of the particular traffic involved.

The conditions complained of are directly due to the competition in the early vegetable business, which extends from Texas to the Atlantic coast. Large areas that were formerly not cultivated or were given over to the culture of single staples such as cane, cotton, or corn, are now devoted to vegetable culture. While it is within the power of the Commission to guard the public against unreasonable charges, or unduly discriminatory practices on the part of a particular carrier, the vicissitudes of competition among shippers can not be compensated for in the freight rate.

Over 90 per cent of the movement from Ponchatoula to Chicago is embraced in shipments of berries, beans, lettuce, and cabbage, as shown by the following table compiled from defendant's carload movement during the season of 1909:

Commodity.	Movements.	Per cent.
	<i>Pounds.</i>	
Strawberries.....	935, 776	41.39
Beans.....	641, 572	28.38
Lettuce.....	261, 716	11.57
Cabbage.....	203, 500	9.09
All other fruits and vegetables.....	218, 385	9.66
Total.....	2, 260, 949	100.00

The carload rate on strawberries from Ponchatoula to Chicago is 61 cents per 100 pounds. In the following table is a comparison with rates on the same article from other shipping points to Chicago:

To Chicago, Ill., from—	Road on which located.	Distance.	Minimum carload weight.	Rate per 100 pounds.
		<i>Miles.</i>	<i>Pounds.</i>	<i>Cents.</i>
Ponchatoula, La.....	I. C. R. R.....	870	18, 000	61
York, Ala.....	Q. & C.....	910	{ \$14, 000 \$18, 000 }	58
De Soto, Miss.....	M. & O.....	826	20, 000	60
New Orleans, La.....	I. C. R. R.....	919	20, 000	59
Fort Worth, Tex.....	Frisco.....	1, 022	17, 000	56
Fayetteville, Ark.....	do.....	644	17, 000	77
Fort Smith, Ark.....	do.....	707	17, 000	66
Van Buren, Ark.....	do.....	702	17, 000	69
Sellman, Mo.....	do.....	606	17, 000	71
Chilton, Mo.....	do.....	691	17, 000	66
Durant, Miss.....	I. C. R. R.....	677	18, 000	66
Curve, Tenn.....	do.....	666	18, 000	66

• South of Ohio River.

• North of Ohio River.

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The tariff provides a minimum on strawberries of 18,000 pounds, but the record shows that this commodity can not be safely loaded to this weight. Indeed, it was testified that due to necessity for proper space for ventilation and refrigeration 14,000 pounds is the maximum to which strawberries should be loaded, though the cars will, in fact, admit of heavier loading. In considering the subject of minimum weights on strawberries, in *Ozark Fruit Growers Asso. v. St. L. & S. F. R. R. Co.*, 16 I. C. C. Rep., 106, we expressed the view that the shipper's best interests are conserved by fixing a minimum as high as the product can be carried under the most advantageous circumstances, with a comparatively low rate. With such an adjustment the shipper may place fewer crates in a car, and the only penalty upon him is that he will have to pay a somewhat higher rate per crate, depending upon how much below the minimum he loads. In that case we found in the tariffs a minimum on strawberries of 17,000 pounds, which was declared to be not unreasonably high under all the circumstances involved. We find this minimum quite generally fixed in the tariffs at 17,000 pounds.

Upon the record in this case and under all the circumstances we are of the opinion that defendant's charge of 61 cents per 100 pounds, minimum 18,000 pounds, on strawberries from Ponchatoula to Chicago is unreasonable in and to the extent that it exceeds 61 cents per 100 pounds, minimum 17,000 pounds, and that for the future said rate of 61 cents, minimum 17,000 pounds, shall not be exceeded.

The principal tonnage from Ponchatoula to Chicago, in addition to strawberries, consists of beans, lettuce, and cabbage. The rate on beans is 52 cents; lettuce, 58.5 cents; and cabbage, 44 cents. As bearing upon the reasonableness of these rates the revenue on certain other commodities, such as iron pipe and rice, was given by defendant, but it appears that these commodities do not move under similar conditions, and they are not shipped at owner's risk nor are they receipted for by defendant under the shipper's load and count practice. The following table shows the rates attacked in comparison with rates on the same commodities from other points to Chicago:

To Chicago, Ill., from—	Distance.	Rate per hundred pounds.		
		Beans (carload).	Lettuce (carload).	Cabbage (carload).
	Miles.	Cents.	Cents.	Cents.
Ponchatoula, La.....	870	52	58½	44
Albany, Ga.....	988	53		63
Jacksonville, Fla.....	1,128	77	77	57
Charleston, S. C.....	1,017	67	67	54
York, Ala.....	910	72		52
Fort Worth, Tex.....	1,022	57	57	52
Ringgold, Tex.....	1,048	57	57	52
Houston, Tex.....	1,318	57	57	52
Pan Handle, Tex.....	1,013	57	57	52

The traffic in these commodities requires expedited service, and the tonnage per car is somewhat light. With the exception of the rate on lettuce, when the rates are considered in connection with the privileges granted by defendant's tariff for mixed carloads and for trailers, to be hereinafter discussed, we do not think that the per-car revenue obtained is unreasonably high. With respect to lettuce, this rate at one time was 52 cents, but the carriers assert that it was placed at that figure inadvertently. Under all the circumstances we find that the present rate of 58½ cents on lettuce is unjust and unreasonable in so far as it exceeds 55 cents per 100 pounds, and that a rate not to exceed 55 cents should be maintained for the future.

One of the matters complained of, and concerning which considerable testimony was offered, related to alleged improper classification of the various kinds of vegetables in the tariff of defendant. It was stated that there is no good reason for a rate of 47 cents on beets, while the rate on radishes is 43 cents, radishes being far more perishable and therefore involving greater risk; that heavy articles like cabbage, potatoes, and watermelons might well be grouped under one rating; that beets, carrots, corn, cucumbers, parsnips, and squash should be the same as eschalots, leeks, and radishes; and that in Western Classification vegetables are uniformly grouped under Class C, and in the tariffs under which vegetables move from Florida all kinds of vegetables are grouped together except cabbage, potatoes, and lettuce.

The traffic involved in this case moves from Ponchatoula to Chicago under refrigeration for which defendant charges 15 cents per 100 pounds with a minimum charge of \$30 per car at point of origin. This charge was attacked as being unreasonable. The testimony of defendant was that the service is furnished complainant at less than it costs the carrier and that the charge is unusually low. The record does not establish the contention that the charge is unreasonable for the service performed.

Complaint was also made against the charge of \$4 per ton for icing fruits and vegetables en route as compared with the charge of \$2.50 for the same service on packing-house products. Defendant explains that this low price of icing packing-house products was made to meet the charge at East St. Louis and elsewhere. The record does not disclose that this \$4 icing charge is, in and of itself, unreasonably high, nor does it appear that complainant's fruit and vegetables compete with packing-house products so as to render the discrimination undue or damaging to complainant.

The minimum on vegetables and fruits generally is 20,000 pounds, both in straight and mixed carloads. The only exception to this is strawberries, the minimum on which we have already passed upon. The principal complaint against this 20,000 minimum is in regard

to its application to lettuce. It was testified that, due to the perishable nature of the articles and the necessity for having proper spacing for ventilation and refrigeration, it is impossible to load a straight carload of lettuce to this minimum. It was stated that a mixed carload of strawberries and lettuce will not hold 20,000 pounds, nor will a car hold 20,000 pounds of strawberries or 20,000 pounds of lettuce, and in view of the fact that a large part of the movement from Ponchatoula is composed of strawberries and lettuce, complainant feels that the minimum is unreasonable. It was strongly urged both at the hearing and the argument that due to this minimum complainant was required to pay for a large amount of weight in excess of actual loading, and reparation based on the amount of this excess is included in complaint.

The record shows that for the season of 1909 the total weight paid for on all shipments was 2,400,561 pounds, of which 190,180 pounds were in excess of the actual weight. This is approximately 8 per cent of the total, and was in large measure collected on shipments of berries. The reduction of the minimum on berries from 18,000 pounds to 17,000 pounds which we have ordered in this case, will result directly and effectively in minimizing this excess, as the only straight carload movements in 1909 were strawberries. The record of shipments of vegetables during the same year from Ponchatoula shows that lettuce does not move in straight carload lots, but that it is invariably loaded in "mixed carloads" of vegetables, and in shipments of this character it is possible by the combination of lettuce with heavier vegetables to reach the prescribed minimum. For this reason we do not consider it necessary at this time to fix a lower minimum on straight carloads of lettuce.

Defendant's mixed carload rule (Rule 4, Illinois Central R. R. tariff, I. C. C. No. 4098) is as follows:

RULE No. 4.—When two or more articles are shipped in a mixed carload by one shipper from one station on one day to one consignee and one destination, the carload rate on each article shall be applied, subject to a minimum weight of 20,000 pounds. When the aggregate weight of a mixed carload shipment does not amount to 20,000 pounds, add to the weight of the highest rated article in the shipment sufficient to make minimum weight of 20,000 pounds. This rule will be used only when its application will make a less total charge than would the application of less-than-carload rates at actual weight.

Complainant attacks the reasonableness of the requirement that the deficit in minimum shall be added to the weight of the highest rated article in the shipment. Under all the circumstances, we are of the opinion, and so hold, that said rule is unreasonable in the requirement that "when the aggregate weight of a mixed carload shipment does not amount to 20,000 pounds, add to the weight of the highest rated article in the shipment sufficient to make minimum weight of 20,000 pounds,"

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and that in lieu of said requirement the rule should for the future provide that when the aggregate weight of a mixed carload shipment does not amount to 20,000 pounds, add to the weight of the heaviest loaded article in the shipment sufficient to make minimum weight of 20,000 pounds, except that when the shipment consists of two or more articles of equal weight the weight sufficient to make the minimum weight of 20,000 pounds shall be added to the weight of the lowest rated article.

The tariff rule of defendant which requires this traffic to move at owner's risk unless 10 per cent in excess of the rate is collected, was seriously objected to by complainant. This rule as published in defendant's tariff and continued in force until June 6, 1910, after the complaint, hearing, and argument in this case, was as follows:

RULE 12.—OWNER'S RISK.—The rates herein apply only on shipments at owner's risk. If the shipper elects not to accept the rates and conditions herein, apply ten (10) per cent higher than rates published in tariff.

This rule on its face is vague and misleading, and justifies complainant's objection. *In the matter of Released Rates*, 13 I. C. C. Rep., 550-565, we said:

It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law. A revision in the interest of simplicity and fairness, eliminating such provisions as may be open to legal objection, would go a long way toward improving the relations of the railroads and the shipping public.

Effective June 6, 1910, defendant corrected its rule to read as follows:

RULE 12.—OWNER'S RISK.—The freight rates herein apply only on property shipped subject to the conditions of the carrier's bill of lading. If the shipper elects not to accept the said reduced rates and conditions he should notify the agent of the receiving carrier in writing at the time his property is offered for shipment, and if he does not give such notice, it will be understood that he desires the property carried subject to the carrier's bill of lading conditions in order to secure the reduced rate thereon. Property carried not subject to the conditions of the carrier's bill of lading will be at the carrier's liability, limited only as provided by common law and by the laws of the United States and of the several states, in so far as they apply. Property thus carried will be charged freight (10 per cent) higher than if shipped subject to the conditions of the carrier's bill of lading, in addition to all other charges provided for in this tariff and supplements, such as for icing, detention, reconsigning, diverting, strips and braces, or removing consolidated carload shipments in packages.

In this form the rule appears to fully remove the complaint against it.

Defendant's practice of requiring this traffic to move at "shipper's load and count" was attacked by complainant as being unreasonable. At the argument complainant stated that defendant's agent declined to issue bills of lading showing the actual contents of the cars by

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packages without the qualifying notation "shipper's load and count" inserted thereon.

Perishable articles, such as complainant ships, must be handled by the carrier with all possible dispatch in order to be properly marketed. To require the carrier in a traffic of this description to count the packages tendered for transportation would, in many instances, retard the shipment and impose an additional burden upon already overburdened station agents without resulting in a compensating advantage to the shipper. Where the shipments are in straight or mixed carloads, which constitute a large majority of complainant's shipments, the cars are sealed at point of origin and should go to destination with seals unbroken. Upon the record the Commission can not say this practice is unreasonable, or that it results in defeating the published rates.

The form of complaint filed in this case can not be properly construed to cover many miscellaneous matters testified to at the hearing and referred to at the argument. We feel that we have been somewhat liberal in dealing with the pleadings and record, but that it would be unjust to defendant to consider certain matters which have crept into the record without proper notice to it in the pleadings. In that connection we take occasion to say that complainant apparently does not distinguish clearly between the usual rules of traffic applicable to carload shipments and the rules applicable to less-than-carload shipments. It has rather sought in this case to secure for itself all the privileges and advantages of both classes of shipments and to avoid many of the responsibilities attaching to each.

No reparation will be awarded.

An order will be issued in accordance with the foregoing conclusions.

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No. 3029.
GEORGE M. SPIEGLE & COMPANY ET AL.
v.
SOUTHERN RAILWAY COMPANY.

Submitted November 2, 1910. Decided November 7, 1910.

The milling-in-transit rates of defendant on lumber at Newport, Tenn., are excessive and discriminatory. Reduction ordered and reparation awarded.

Mortimer C. Rhone for complainants.

Claudian B. Northrop for defendant.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complaint in this case grows out of the fact that the milling-in-transit rates on lumber of the Southern Railway at Bristol and Johnson City, competitive points, were lower than at Newport, a non-competitive point, all in the state of Tennessee.

The complainants at the time of the institution of this action were engaged in buying, selling, manufacturing, dressing, and jobbing lumber at Newport. The business was begun in 1897 by George M. Spiegle & Company and afterwards organized in corporate form under the laws of Tennessee as the McCabe Lumber Company. Since the institution of this proceeding George M. Spiegle & Company became the owners of the stock of the McCabe Lumber Company, and George M. Spiegle has become the owner of the business of George M. Spiegle & Company, including all interest in this action. A plant was constructed at Newport, consisting of a saw and planing mill, dry kilns, lumber sheds, and other structures, involving an investment of \$20,000. and stood upon the books of the company at the beginning of this action at a valuation of \$12,000. Early in the history of their business the complainants purchased timber on the stump in the vicinity of Newport, hauled it to the mill, sawed it into lumber, and finished it for the market; but as the supply of timber became more remote the saw-mill department became unprofitable, and in 1903 or 1904 it was closed. Most of the lumber subsequently handled was either sawed

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elsewhere by them or purchased in the rough from small operators and shipped to Newport for milling and sorting. A stock of lumber was carried in the yard running from 1,000,000 to 5,000,000 feet, valued at from \$22,000 to \$76,000. An average of 34 men were employed during recent years; the monthly pay roll being upward of \$1,200. Lumber was drawn from the territory of the Southern Railway west, north, and east of Newport, and there prepared for market. Material originating west or north was merely stopped en route to market for milling and sorting at Newport, but that coming from the east involved a back haul. During the two years preceding the institution of this suit the complainants shipped out of Newport to northern and eastern markets 374 carloads of dressed and sorted lumber. Their proof was that the average profit per carload under the most favorable tariff they enjoyed was about \$8.

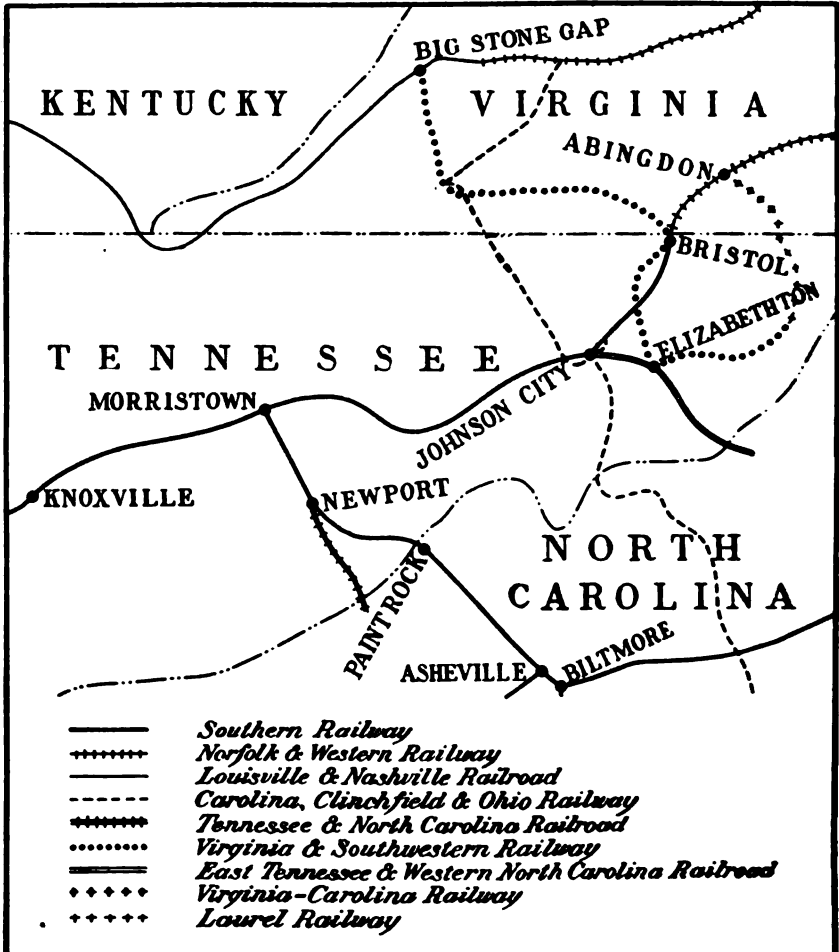
Complainants represented that east Tennessee and western North Carolina furnish the largest supply in the country of chestnut and other hard woods upon which they built up their trade, and that this trade can not advantageously be supplied from any other source.

When the business in question was inaugurated in 1897 the charge for the stop-over privilege on lumber at Newport was \$5 per car. In 1899 it was changed to two cents per 100 pounds. A tariff effective on October 21, 1905, provided a charge of two cents per 100, and a minimum carload charge of \$5. In a tariff effective January 26, 1907, there was fixed a time limit of six months for billing out. Another tariff effective March 27, 1908, raised the charge to \$6 per car from points on the railroad other than those east of Newport, and in that direction it specified that from points between Newport and Paint Rock, N. C., the stop-over charge should be four cents per 100 pounds, with a minimum of \$12 per car, and from points between Paint Rock and Asheville, N. C., not including Asheville, it should be five cents per 100 pounds, with a minimum of \$15 per car. A further tariff was issued, providing that from January 1, 1909, the limit on reshipment should be one year.

A tariff effective at Bristol on September 12, 1905, and another effective at Johnson City on August 21, 1905, prescribed a stop-over charge of two cents per 100 pounds with a minimum of \$5 per carload on lumber. A tariff effective at Bristol on January 5, 1907, and another effective at Johnson City on February 14, 1907, placed the reshipment limit at six months. A tariff effective on April 3, 1908, at Bristol raised the carload minimum to \$6. Tariffs effective January 8, 1909, at Bristol and on January 15, 1909, at Johnson City reduced the rate at both points to \$2 per car, with a right of reshipment of twelve months. Tariffs effective on May 16, 1910, at both Bristol and Johnson City changed the rate to one cent per 100 pounds and the carload minimum to \$3.

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Bristol is the terminus of the line of the Southern Railway running northeastward from Chattanooga through Knoxville, Morristown, and Johnson City. Morristown is 89 miles from Bristol and Johnson City is between the two, 64 miles from Morristown and 25 miles from Bristol. At Morristown a branch diverges to the south and east connecting with the main line at Asheville, 87 miles distant. On this branch, 22 miles from Morristown, is Newport. The accompanying map illustrates the situation.



The reduction in rates on lumber at Bristol was made by the Southern Railway to meet the rates of the Norfolk & Western and the Virginia & Southwestern, competitors at that point. At Johnson City the East Tennessee & North Carolina and Carolina, Clinchfield & Ohio made no charge for the stop-over privilege, and were competitors for outbound shipments. The defendant, the Southern Rail-

way, admits that the rates are as represented by the complainants, and, aside from citing the need of meeting the competition at Bristol and Johnson City, alleges that the cost of transacting the business at Newport, where only a relatively small amount is done, is greater, the volume being considered, than at the other places named, they being important railroad points.

The milling-in-transit rates on grain are the same at Bristol, Johnson City, and Newport.

The reduction in the milling-in-transit rate at Bristol and Johnson City not only enabled jobbers and finishers of lumber at those towns to ship their lumber to market at advantageous rates, but it enabled them to overbid the complainants in buying standing timber and rough lumber and practically monopolize the trade. The additional burden placed upon the complainants by the increase of the rate for lumber brought from the east, together with the reduced rate granted to dealers in Bristol and Johnson City, made it impossible for them to longer compete with the Bristol and Johnson City dealers, and in March, 1910, they withdrew from the market and aver that unless relief can be granted they must permanently discontinue their business.

Under the existing conditions a dealer in Bristol can go to points immediately east and west of Newport and buy lumber at a higher price than complainants can afford to pay; he can ship it more than 100 miles to Bristol, mill and sort it and ship it back through Newport at a cost of one cent per 100 pounds, whereas complainants must pay two cents per 100 pounds for lumber coming from the west and four cents for that coming from the east between Newport and Paint Rock. Dealers in Johnson City have the same advantage.

It is often necessary, on account of competitive conditions, to recognize the justice of charging more for a service at one point where all the conditions except that of competition are similar, than for a like service at another place where no competition exists, but it can not be held to be just to so fix rates or charges as to destroy the business of one concern and create a monopoly in favor of other concerns even though it be merely incidental to meeting competitive rates. Such is the effect of the disparity in milling-in-transit charges between the towns involved in this case. The contention of the defendant that the cost of handling lumber at Newport is extra high fails to have weight in face of the fact that it has not been found necessary to impose an additional charge for a similar service in handling grain. If it is necessary that competitive conditions at Bristol and Johnson City be met in the way they have been in this case—and of the need of this there is probably no question—that circumstance must not be permitted to injuriously affect the business of complainants. To guard

against such an outcome they should be given the same advantages as those granted the lumber shippers at Johnson City. This is in accordance with the decision of the Commission in *Koch v. P. R. R. Co.*, 10 I. C. C. Rep., 675, wherein it was held:

Shippers are not entitled as a matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; but allowance of the privilege by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another section served by its line.

See also *Celina Mill & Elevator Co. v. St. L. S. W. Ry. Co.*, 15 I. C. C. Rep., 138.

We find that the charges imposed in connection with the milling-in-transit privilege at Newport, Tenn., are unreasonable, and also that in this respect Newport is discriminated against in favor of Johnson City. It will be ordered that this discrimination shall cease and that the defendants shall charge no more for the milling-in-transit privilege extended at Newport on lumber shipments than is contemporaneously imposed at Johnson City.

Reparation will be ordered in favor of complainants on the basis of the rates applicable at Johnson City, but the specific amount of reparation to be awarded will be the subject of further action by the Commission.

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No. 2699.
SLIGO IRON STORE COMPANY
v.
UNION PACIFIC RAILROAD COMPANY ET AL.

Submitted December 29, 1909. Decided November 14, 1910.

1. Reparation awarded against the principal defendant for unreasonable rate on one carload of soft coal from Omaha, Nebr., to Ogden, Utah.
2. For reasons stated in the decision the Commission does not attempt to express an opinion upon the reasonableness of the various parts of the combination rate on soft coal from Thomas, W. Va., to Tonopah, Nev., nor to establish a joint through rate.
3. Without attempting to determine what would be a reasonable rate to apply to the transportation of bituminous coal generally between Cairo, Ill., and Texarkana, Ark., the Commission is of the opinion that the rate charged in this case was not unreasonable. Amendment to complaint dismissed.

Carl Hirdler for complainant.

F. C. Dillard for Union Pacific Railroad Company and Southern Pacific Company.

James C. Jeffery for St. Louis, Iron Mountain & Southern Railway Company.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The original complaint herein involves the shipment, on November 5, 1906, of one carload of soft coal from Thomas, W. Va., to Tonopah, Nev., weighing 61,600 pounds net. The charges assessed and collected on this shipment aggregated \$633, based upon a combination of \$20.60 per ton, as follows:

	Per ton.
Thomas to E. St. Louis.....	\$2.50
E. St. Louis to Omaha.....	1.80
Omaha to Ogden.....	7.80
Ogden to Tonopah.....	9.00
Total.....	20.60
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There was no joint through rate in effect at the time of shipment, and the only question involved here is as to the reasonableness of that portion of the rate charged between Omaha and Ogden, \$7.30.

Previous to the movement of this shipment the Union Pacific Railroad had published a rate of \$5.25 between Omaha and Ogden, effective November 24, 1906, and applicable on eastern business. This reduction, however, had not become effective at the time shipment started from point of origin, but it did go into effect before the car reached the lines of the Union Pacific.

It was admitted by the Union Pacific at the hearing that this reduction was brought about by a change in commercial conditions and a general readjustment of class and commodity rates to meet those changed conditions, and that, in view of the changed conditions which existed at the time of shipment which caused the reduction, the rate of \$7.30 applied to this particular shipment was scarcely a fair one to be imposed. The defendant Union Pacific Railroad Company is therefore willing to make refund on the basis of the lower rate of \$5.25.

We are of the opinion that the charge of \$7.30 per ton from Omaha to Ogden was excessive, that it should not have exceeded \$5.25 per ton, and that the complainant is entitled to recover from the Union Pacific Railroad Company the difference between the rate paid and what would have been paid upon the above basis, or \$63.14. This matter was called to the attention of the Commission upon its informal docket, April 15, 1907.

Complainant also asks for the establishment of a maximum rate for the future between Thomas and Tonopah not to exceed \$18.55 per ton. It appears from the evidence and from examination of our tariffs that several changes have been made in the various rates which make up the total through charge, so that this through rate has never equaled since the filing of this complaint and does not now equal \$18.55 per ton. We shall not, therefore, attempt to express an opinion upon the reasonableness of the various parts of this through rate, nor to establish a joint through rate.

The complainant also made shipment of one carload of blacksmith coal from Lilly, Pa., to Texarkana, Ark., May 4, 1909, and the reasonableness of the rate applied to this shipment was put in issue by amendment to this complaint. The weight of this car was 58,500 pounds, and the charges collected aggregated \$197.50, based upon a combination of \$6.75 per ton made up of the rate of \$2.50 from Lilly to Cairo and \$4.25 from Cairo to Texarkana. The complainant alleges that the rate of \$4.25 from Cairo to Texarkana was unreasonable and shows in evidence of this that there was in force at the same time a rate of \$2.40 per ton on soft coal between those points. Repa-

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ration is asked in the sum of \$54.18, the difference between these two rates. The distance between Cairo and Texarkana via the Iron Mountain is 399 miles.

The tariff of defendants in effect at date of shipment specifically named blacksmith or soft coal and the rate applicable thereto between Cairo and Texarkana as \$4.25 per ton, minimum 30,000 pounds. The rate of \$2.40 on soft coal, minimum 40,000 pounds, between these points applied only from the Illinois mines, having been put in to meet competition of the Illinois Central and its connections. This rate was canceled September 15, 1909, and the only rate in effect to-day between Cairo and Texarkana on blacksmith or soft coal when coming from beyond or Cairo proper is \$4.25.

The case was submitted upon the record as made at the hearing, argument and filing of briefs being waived.

In *Sligo Iron Store Co. v. A., T. & S. F. Ry. Co.*, 17 I. C. C. Rep., 139, it was held that smithing coal was of greater value than ordinary bituminous coal and that a higher rate might properly be applied to its transportation. This rate of \$4.25 applies from both Cairo and St. Louis as points of origin and to Texas common points as points of delivery. Without attempting to determine what would be a reasonable rate to apply to the transportation of bituminous coal generally between Cairo and Texarkana, we are of the opinion that the rate charged in the case before us was not unreasonable. This amendment to the complaint will therefore be dismissed.

An order will be issued accordingly.

No. 2811. (ORIGINAL PETITION.)
HYDRAULIC-PRESS BRICK COMPANY
v.
MOBILE & OHIO RAILROAD COMPANY ET AL

Submitted February 14, 1910. Decided November 14, 1910.

Reasonable rate for transportation of brick from Cheltenham, Mo., to Tuscaloosa, Ala., prescribed and reparation awarded.

William S. Bedal and Stewart, Eliot, Chaplin & Blayney for complainant.

Sidney F. Andrews for Mobile & Ohio Railroad Company.

John G. Egan for St. Louis & San Francisco Railroad Company.

J. L. Howell for Terminal Railroad Association of St. Louis.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant in this proceeding is an extensive manufacturer of various kinds of brick and in the conduct of its business operates a plant at Cheltenham, Mo., a point about five miles from St. Louis, located on the St. Louis & San Francisco Railroad. Complaint is made of the rate charged on shipments to Tuscaloosa, Ala., from Cheltenham, and also from South Park, Ohio, to Fort Smith, Ark. These two complaints were heard together and will be considered separately in this report.

Between the latter part of May, 1908, and the latter part of April, 1909, there was shipped from Cheltenham, Mo., to Tuscaloosa, Ala., 49 carloads of pressed brick, the aggregate weight being 2,810,425 pounds, which, at the rate charged of 15 cents per 100 pounds, totaled \$4,215.62. Complainant alleges that this rate of 15 cents was unreasonable and that a reasonable rate to have applied to the shipment would have been one of 12 cents, and asks reparation on the basis of the latter rate.

The rate of 12 cents has been in effect some nine years and in the tariff it is stated that the same will apply to fire brick only. The rate charged was the rate applicable to pressed brick.

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The Commission, in the *Metropolitan Paving Brick Co. v. A. A. R. R. Co.*, 17 I. C. C. Rep., 197, held that the carriers could make no difference in the classification between fire brick and pressed brick, but must accord to all brick the same rate, since it was manifestly an impossibility to so classify them as not to prohibit, if not in fact to encourage, the misbilling of the product in order to secure lower rates.

Brick is a desirable traffic to handle. It moves in large quantities, and the cars can be loaded to their full capacity, and it is not subject to loss and damage. All these elements should be considered in the making of a rate, and call for a low rate.

This rate of 12 cents from both Cincinnati and St. Louis has been effective a number of years, and apparently what brick has moved has gone as fire brick. If the carriers have seen fit to voluntarily establish this rate of 12 cents on fire brick, which is confessedly a more valuable brick than the ordinary pressed brick, it does not seem to us unreasonable to hold that it is a just rate, to be applied to the transportation of brick in general.

It is our opinion that a just and reasonable rate to be observed in the future for the transportation of brick from Cheltenham, Mo., to Tuscaloosa, Ala., should not exceed 12 cents per 100 pounds, minimum 40,000 pounds; that a rate not exceeding 12 cents should have been applied to the shipments in question, and that the complainant is entitled to recover of the defendants the sum of \$843.11 on this basis, with interest from September 1, 1909.

An order will be issued accordingly.

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No. 2811. (FIRST AMENDMENT.)
HYDRAULIC-PRESS BRICK COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY
ET AL.

Submitted February 14, 1910. Decided November 14, 1910.

Reparation awarded against the carrier interested for unreasonable rate on three carloads of brick from St. Louis, Mo., to Fort Smith, Ark.

William S. Bedal and Stewart, Eliot, Chaplin & Blayne for complainant.

James C. Jeffery for St. Louis, Iron Mountain & Southern Railway Company.

John G. Egan for St. Louis & San Francisco Railroad Company.

J. L. Howell for Terminal Railroad Association of St. Louis.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

The complainant shipped, in the latter part of November and the first part of December, 1908, three carloads of brick from its plant at South Park, Ohio, to Fort Smith, Ark. The defendants charged a combination rate of 36½ cents per 100 pounds. Complaint is made as to the reasonableness of the charge of 24 cents from St. Louis to destination over the Iron Mountain road. It is stated, and admitted by the defendant carrier interested, that a rate of 16 cents from St. Louis would have been reasonable, and on this basis the complainant is entitled to recover of the St. Louis, Iron Mountain & Southern the sum of \$146.40, with interest from December 22, 1908, which is the difference between \$479.20 as collected and \$332.80 based on the rate of 16 cents from St. Louis to Fort Smith.

An order will be issued accordingly.

19 I. C. C. Rep.

No. 757.

ST. LOUIS HAY & GRAIN COMPANY

v.

MOBILE & OHIO RAILROAD COMPANY ET AL.

No. 884.

SAME

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.

No. 923.

J. R. LUCAS & COMPANY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

No. 946.

BARTLETT COMMISSION COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Submitted October 12, 1910. Decided November 7, 1910.

Rate of 2 cents per 100 pounds for the service of defendant carriers in connection with reconsignment at East St. Louis, Ill., of hay in carloads originating at points north, east, and west thereof and destined to southeastern points, at the time said service was rendered found unjust and unreasonable to the extent that the same exceeded 1½ cents per 100 pounds. Reparation awarded.

L. O. Whitnel for complainants.

Sidney F. Andrews for Mobile & Ohio Railroad Company and Illinois Central Railroad Company.

Perkins Baxter for Louisville & Nashville Railroad Company.

Edw. C. Kramer for Southern Railway Company.

REPORT OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The question involved in each of these cases is the reasonableness of defendants' reconsignment charge at East St. Louis on shipments
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of hay originating at points north, west, and east thereof and subsequently reconsigned to southeastern destinations. Complaint was first made in case No. 757, and the Commission in that case found the cost to the carriers of such reconsignment service at East St. Louis not to exceed 1 cent per 100 pounds and awarded reparation to that basis, 11 I. C. C. Rep., 90. The defendants refused to pay the reparation and suit therefor was brought in the United States circuit court for the eastern district of Illinois, which rendered judgment for complainant in accordance with the order of the Commission, and this judgment was affirmed by the United States circuit court of appeals for the seventh circuit. The Supreme Court, upon appeal, reversed the lower court and held that carriers are entitled to a reasonable profit on the service performed by them under a reconsignment privilege as well as on the transportation proper. The case was remanded to the circuit court with instructions to send the matter back to the Commission for further investigation and report, 214 U. S., 297.

In the meantime the other complaints above stated were presented to the Commission and testimony therein was taken, but by consent of the parties argument was postponed until after the determination of case No. 757 by the Supreme Court. Since the decision of that tribunal in the case last named the Commission fixed a time for the filing of briefs in the other three cases, but subsequently complainants and defendants in all of the cases have entered into stipulations for a compromise and adjustment of the claims for reparation involved therein, which stipulations have been duly signed and filed with the Commission for approval.

In these stipulations the claims barred by the limitation provision of the act as interpreted by the Commission have been eliminated and the reparation agreed upon is based upon one-half cent per 100 pounds. In other words, accepting the Commission's finding of the cost to the defendant carriers of this reconsignment service at East St. Louis to be 1 cent per 100 pounds, the carriers have been allowed a profit of one-half cent per 100 pounds. The stipulations also provide that the St. Louis Hay & Grain Company, complainant in cases Nos. 757 and 884, having claims against the Southern Railway Company for reparation on shipments covered by those cases, agrees to withdraw said claims, and the carrier named agrees that the withdrawal thereof shall be regarded as a satisfaction of the judgment of that carrier against the St. Louis Hay & Grain Company for court costs. In case No. 946, Bartlett Commission Company v. Illinois Central Railroad Company et al., complainant stipulates for the dismissal of its claim against the Southern Railway Company. It also appears from the stipulations, and is verified from the tariffs on file in this office, that the reconsignment charge

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of 2 cents per 100 pounds, upon which these claims arose, was entirely eliminated by the defendant carriers on November 15, 1907, and that there is now no charge exacted for this service at East St. Louis.

In consideration of these premises it is the finding and conclusion of the Commission that the rate of 2 cents per 100 pounds for the service of the defendant carriers in connection with reconsignment of hay at East St. Louis at the time the same was rendered was unjust and unreasonable to the extent that the same exceeded 1½ cents per 100 pounds, and that complainants are entitled to reparation, which is hereby awarded on this basis, as follows:

	No. 757.	No. 884.	No. 923.	No. 946.
Illinois Central R. R. Co.....	\$44. 97	\$183. 61	.....	\$98. 24
Mobile & Ohio R. R. Co.....	340. 44	314. 47	.....	21. 00
Louisville & Nashville R. R. Co.....	186. 18	87. 06	\$501. 18	27. 68
Total.....	577. 59	585. 13	501. 18	146. 87

Orders will be entered accordingly.

No. 2242.

TRAUGOTT SCHMIDT & SONS

v.

MICHIGAN CENTRAL RAILROAD COMPANY ET AL.

Submitted December 10, 1909. Decided November 14, 1910.

Present blanket any-quantity rate of 50 cents per 100 pounds on wool "in the grease" applying from Chicago, Detroit, and other points to Boston found not unduly discriminatory or unreasonable as applied to Detroit. Petition asking the Commission to order establishment of a "stop-off" privilege on wool at Detroit denied. Complaint dismissed.

John B. Daish for complainant.

O. E. Butterfield for New York Central Lines.

N. S. Brown and W. H. Wylie for Wabash Railroad Company.

Charles B. Fernald for Pennsylvania Lines.

McPherson, Bills & Streeter for Baltimore & Ohio Railroad Company; Cincinnati, Hamilton & Dayton Railway Company; and Pere Marquette Railroad Company.

L. C. Stanley for Grand Trunk Companies.

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REPORT OF THE COMMISSION.

LANE, *Commissioner*:

Boston is the chief wool market of the United States. The price of wool is "made" in Boston as the price of grain is made in Chicago. Western wool, meaning thereby that which comes from Montana, Idaho, and other far western states, is shipped to Boston via Omaha, St. Louis, or Chicago. If shipped via Omaha it enjoys a stop-over privilege at that city where it may be sorted and graded. This privilege is extended in the tariffs of the carriers, and thereby Omaha becomes a wool market. If shipped via St. Louis or Chicago a similar privilege arises out of the fact that the rates from the far west to the east "break" on Chicago, as the railroad men express it—that is to say, the through rate from Montana to Boston is a combination of a rate up to St. Louis or Chicago plus other rates from those points to Boston. Eastern wool—that which originates in nearer states such as Michigan, Ohio, Indiana, and Illinois—goes direct to Boston in great part from the point of production. For some years prior to December, 1907, a stop-off privilege for the purpose of storing, grading, and resacking wool was allowed at Detroit, where the complainant does business as a wool merchant. This privilege was cut off and one of the prayers of the complaint is that this sorting-in-transit privilege may be restored. The arguments for this contention are that such privilege existed in the past and the business of complainant was partly built up under it, that Omaha is granted such privilege, and that on other commodities, such as lumber and sugar, storage-in-transit and milling-in-transit privileges are granted at Detroit, for the granting of which no greater commercial necessity exists than for the granting of the transit privilege to wool. Without such privilege the complainant contends that the rate situation from Detroit to Boston puts it at such disadvantage as to deny to Detroit the benefits of her proximity to Boston.

On May 16, 1904, a blanket rate on wool in the grease (which covers practically all of the wool from this territory) was made from Chicago and Chicago rate points on the west to a point near Youngstown, Ohio, on the east, and from points in the lower peninsula of Michigan southward, including the greater part of Indiana and Ohio. Within this broad zone all points have a 50-cent any-quantity rate on wool in the grease to Boston. Chicago and Milwaukee ship for the same figure that Detroit does. St. Louis is given a rate of 57½ cents. This 50-cent rate to Boston makes the rate to New York 45 cents; Philadelphia, 43 cents; and Baltimore, 42 cents. It is strongly urged by the complainant that Detroit should have a 78 per cent rating as to wool; in short, that the blanketing of this territory does Detroit an injustice. Prior to the institution of this 50-cent blanket rate the

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rate on wool from Detroit to the eastern seaboard was fixed, as are rates generally, upon the usual Official Classification percentage basis. For instance, on January 1, 1900, the rate from Chicago on wool in the grease was 82 cents on less-than-carload lots, and 71 cents on carloads, while the rate from Detroit was 65½ cents less than carloads and 56½ cents on carloads. On March 1, 1903, any-quantity rates of 55 cents from Chicago and 44 cents from Detroit were established, thus still maintaining the 78 per cent basis as to Detroit. But on May 16, 1904, the any-quantity rate of 50 cents was established alike from Chicago and Detroit.

The justification given for the 50-cent rate from Chicago is that it was put in to meet competition through St. Louis and the southwestern gateways to Boston. The carriers serving Chicago claim that they were compelled by reason of this competition to make a lower rate out of that city, but that it would be unfair to take this rate as a basis for the application of the percentage principle. The competition which they felt called upon to meet at Chicago did not exist at farther eastern points, and for this reason they claimed that it would have been lawful to have made higher rates from such points. Not desiring, however, to violate the principle of the long-and-short haul provision of the act, they extended the same rate to these points that was made at Chicago.

We have given much consideration to the several nice questions which are involved in this proceeding. As to the institution of a transit privilege at Detroit the complainant is manifestly justified in asking the reason why such privilege should not be granted on wool when it is granted upon other commodities. To be sure wool is not scoured at Detroit. The value of the product is not added to by being removed from the cars at that city and there sorted and reloaded. Neither, it may be said, is the value of sugar added to by being held in a warehouse at that point, and yet the carriers grant such transit privilege. Omaha enjoys advantages under the carriers' tariffs which Detroit regards herself as entitled to, but the carriers which serve Omaha are not those which serve Detroit. The western carriers as a matter of policy give Omaha a certain privilege which the eastern carriers as a matter of policy deny to Detroit. This affects Detroit, no doubt, injuriously to some extent, but it is difficult to see how it can be remedied (1) because the carrying lines involved at the two cities are not the same, and (2) because to uphold such claim on the part of Detroit would justify, if not require, a wide extension of the privilege to other points. If we give to Detroit a transit privilege, every other point within Official Classification territory would properly feel that it would be entitled to such privilege. And instead of extending such privileges we believe it should be our

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policy to curtail them to as great a degree as may be consistent with the industrial development of the country, for our investigations show that they are the source and aggravating cause of many of the most serious complaints brought to our notice. We feel that we are compelled, therefore, upon principle, to deny the petition for a transit privilege at Detroit.

As to the rate situation it is manifest that Detroit pays more per ton per mile for the carrying of wool in the grease to Boston than does Chicago. This is true of every blanket or zone rate that is made. It makes a nearby point pay a proportionally higher rate than a more distant point. We do not feel justified in ordering a reduction of the Detroit-Boston any-quantity rate to 39 cents per 100 pounds upon a commodity worth from 15 to 30 cents per pound. The present rate of 50 cents from Detroit is much lower than any previous rate, excepting one which obtained for about a year following March 1, 1903, when the rate from Chicago to Boston was 55 cents and from Detroit to Boston 44 cents. The flat 50-cent any-quantity rate without doubt allows small producers and dealers at many points to ship directly to Boston, and it is not without significance that the only complaint as to this group rate comes from a middleman whose arguments are very persuasive as to his own disadvantage under present conditions, but do not bring conviction as to the disadvantage under which either the wool producer or the wool manufacturer suffers by reason of this somewhat anomalous rate condition.

The complaint will be dismissed.

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No. 3183.

W. L. DOUGLAS SHOE COMPANY ET AL.
v.
ADAMS EXPRESS COMPANY.

Submitted November 2, 1910. Decided November 14, 1910.

1. It appears that after defendant had purchased the stock of a competing express company a lower rate via rail and water from Brockton and other points in Massachusetts to New York City was withdrawn and the route abolished; upon petition of shippers asking that the rail-and-water rate and route be restored and praying for reparation; *Held*, That the Commission has not sufficient knowledge to attempt to make an order with respect to all the localities involved, but suggests to defendant that the original route and rate be restored or that an equivalent rate be established by some other route; if defendant does not within 60 days file its tariff in obedience to this suggestion, the matter will be set down for further investigation, and a definite order will be made. Claim for reparation denied.
2. The Commission has no authority to order the rival company which sold out to defendant to restore this route and rate. If such authority resides anywhere, it is in the courts and not in this Commission.

Richard J. Donovan and Herbert D. Cohen for complainants.
T. B. Harrison, jr., for defendant.

REPORT OF THE COMMISSION.

PROUTY, Commissioner:

This complaint was originally brought by the Douglas Shoe Company in conjunction with certain other shoe companies engaged in the manufacture of boots and shoes at Brockton, Mass., and attacked merely the rate on boots and shoes from Brockton to New York City. Subsequently boot and shoe manufacturers located at other points in that vicinity, and also firms and individuals engaged in various communities in other lines of business became parties, so that now the general question of express rates between this entire section of Massachusetts and New York City is involved.

The New York & Boston Despatch Express Company is a Massachusetts corporation with a capital stock of \$100,000, which originally transacted an express business over the railroads and steamships

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of the Old Colony Railroad Company. In 1880 the Adams Express Company bought one-half the capital stock of the New York & Boston Company, and in 1888 acquired the balance. Since the latter date it has been and now is the owner of the entire capital stock of the New York & Boston Company. ✓

The Adams Express Company operates under exclusive contract over the lines of the New York, New Haven & Hartford Railroad, and this contract embraces subsequently acquired lines. Some years ago the New Haven Company took over the railroad lines and vessels of the Old Colony Company and thereupon the right of the Adams Company to do business upon those lines, upon the expiration of the contract of the New York & Boston Company, attached, under the terms of its contract with the New Haven Company.

For some reason the New York & Boston Company continued to maintain an independent existence and to transact an express business from its original offices until March 1, 1910, when it withdrew from all business except the operation of a line between New York and Boston. The Adams Company had maintained offices in connection with the New York & Boston Company at some of the larger towns in this vicinity. On March 1, when the New York & Boston Company withdrew from business, the Adams Company took over its business, so that all the offices of the New York & Boston Company became exclusive offices of the Adams Company.

The Adams Company has maintained for many years a base rate of \$1 per 100 pounds from the towns in question to New York City, which has applied all rail. The New York & Boston Company has maintained a rate of 75 cents from these towns to New York City via rail to some Sound port, and thence by water to New York. From Brockton, for example, the line was all rail to Fall River and from Fall River by steamer. When the New York & Boston Company withdrew from business the Adams Company did not reestablish or continue these rail and water rates, and the result was to deprive shippers of any rate except the \$1 all-rail rate. It will be seen that there was not, strictly speaking, an advance in express charges at this time, but simply a discontinuance of the route by which the 75-cent rate had in the past been available.

It should be noted that no attack is made in this proceeding upon the \$1 all-rail rate. This has been for many years and now is the all-rail rate between Boston and New York. Express traffic from Brockton via the all-rail route goes to Boston and from thence to New York. Some of the towns in question are upon the direct line of the New Haven road between Boston and New York, and the distance from these points is somewhat less than from Boston, but,

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on the whole, no claim is made that the \$1 all-rail rate is unreasonable; nor is the Commission asked to reduce that rate. The contention of the complainants is that the old route and the old rate should be restored. Two questions arise: First, in fairness as between these communities and the Adams Express Company, ought the 75-cent rate to be restored? Second, if so, has the Commission jurisdiction to restore it?

It is plain that as a result of these various transactions in the way of stock purchase and lease the Adams Express Company and the New Haven Railroad Company have acquired a monopoly of the express business in this section. The complainants urged that they ought not to be allowed to use this monopoly for the purpose of depriving these localities of a facility and an advantage which they would otherwise enjoy. The Adams Express Company answers that the net result of the withdrawal from business of the New York & Boston Company is a benefit to these communities, in that they pay less express charges in gross since than they did before.

There were some 130 exclusive offices of the New York & Boston Company. In New England there are some 500 exclusive offices of the Adams Company and outside of New England several times that number. The ordinary method of constructing express rates between an exclusive office of one company and an exclusive office of another is to combine the sum of the local rates of the two companies upon the junction point, and this results in a higher through charge than would be imposed if the entire transportation was over a single line. The effect, therefore, of converting the New York & Boston offices into Adams offices has been to reduce the rates between these points and the exclusive offices of the Adams Company, and that company insists, and it is likely true, that the result is a decrease in the total amount of express charges paid.

But the question for determination is upon the reasonableness of this particular route and rate from these complaining communities to the city of New York, and not as to other rates to different points. If the complainants are entitled to this rate, relief should not be denied them upon the ground that certain other communities have been benefited or that the rates which they themselves enjoy to other points have been reduced.

There has been for many years and still is a rail-and-water passenger rate from these points to New York City which is less than the all-rail rate. For many years previous to March 1, 1910, there was via rail and water an express service between these points upon a base rate which never exceeded 75 cents per 100 pounds. The location of these communities is such that they obtain, so long as free play is allowed to competitive transportation agencies, a lower

express rate via the rail-and-water route than is accorded by the all-rail route. It is only when the agencies of transportation have been monopolized by this defendant and its partner, the New Haven Railroad, that the rate of 75 cents can be withdrawn. We are of the opinion that the route is a natural one and that an express service ought to be maintained via that route, or, at all events, that this defendant ought not to be permitted to deprive these communities of the use of this route at a reasonable rate unless it gives to them the benefit of a corresponding rate by some other route.

The defendant urges that the rate of 75 cents is unreasonably low, and that even if the route were reestablished the rate ought to be advanced. The evidence adduced is twofold. First, it is said that for the last four years previous to its withdrawal from business the New York & Boston Company lost on the average over \$34,000 per year. Without analyzing these figures, but assuming the fact to be as claimed, this does not show that the particular rate in question was unreasonable. It was not denied by the defendant that previous to 1906 the New York & Boston Company had voluntarily conceded a rate of 50 cents to the larger shippers in these communities, under which the bulk of the traffic moved. Subsequent to the Hepburn amendment by which express companies were brought under the jurisdiction of this Commission the 75-cent rate has been maintained.

Secondly, the New York & Boston Company, as already stated, still maintains an express service by rail and water between Boston and New York upon a base rate of 75 cents, and the defendant showed that this business for the current year had resulted in a considerable loss. But this is not conclusive, for it appears from the figures furnished by the defendant that the cost of the terminal service in Boston is much greater than it ever has been in Brockton or at similar interior points, and it may well be that even though the Boston business is handled at a loss similar business from these smaller communities might not be.

The rate from Boston has never exceeded 75 cents, and it is somewhat difficult to believe, notwithstanding the figures presented by the defendant, that this business has been all these years transacted at a loss and is still being continued upon a losing basis.

The second question for consideration is, Can the Commission order a restoration of this route and rate? Plainly it can not require the New York & Boston Company to resume business. If such authority resides anywhere, it is in the courts and not in this Commission.

There is through passenger service by rail from Boston to Fall River, and thence by boat to New York. The testimony shows that an express service is maintained by rail between Brockton

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and Fall River and by water between Fall River and New York, but apparently there is no through service by this route. What the facts may be as to the other points in controversy in this respect is not disclosed by the testimony.

We are of the opinion that where an express service is already maintained by a single company this Commission has authority to require the application of a through rate by that company. Certainly we can require this defendant to give to these communities a reasonable rate to the city of New York by some avenue. If they have shut up and decline to open the old route, they should be compelled to establish the lower rate by some other route. We have not sufficient knowledge to attempt to make an order with respect to all the localities involved, and we shall, therefore, for the present, suggest to the Adams Express Company that the original route and rate be restored or that an equivalent rate be established by some other route. If that company does not within sixty days file its tariff in obedience to this suggestion, the matter will be set down for further investigation, and a definite order will be made.

The complainants pray for reparation with respect to shipments which have moved since March 1, 1910, under the all-rail base rate of \$1; but it is difficult to see upon what theory such reparation can be awarded. These shipments have taken the all-rail route, and there is no finding that the rate via this route is excessive. The New York & Boston Company is not a party to this proceeding, and no damages could be assessed against it if it were. While we now hold that the Adams Company ought to accord these shippers a rate of 75 cents via the rail-and-water route, it is not apparent that we could or should award damages for their failure to do so up to the present time. The claim for reparation will be denied.

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No. 2253.

GULF COAST NAVIGATION COMPANY

v.

KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.

Submitted April 7, 1910. Decided November 14, 1910.

A company engaged in the sale and distribution of oils and fuel transferred its barges and tugboats to the complainant company, incorporated by it for the purpose, and the stock, of which it now owns. Upon complaint by the latter company asking for through routes and joint rates to certain landings on the Neches and Sabine rivers, to which it does not appear that it carries any substantial traffic for other shippers; *Held*, That the service performed by the complainant for the oil company by which it is owned is not a service of transportation, and the mere fact that the complainant has been incorporated as a common carrier and is able to pick up some traffic for other interests gives it no right to demand joint through rates with the defendants, and thus to compel the defendants to contribute to the expense of its operation.

Greer & Minor and *Charles D. Drayton* for complainant.

S. W. Moore, F. H. Moore, and Evans Browne for defendants.

REPORT OF THE COMMISSION.

HARLAN, Commissioner:

The Higgins Oil & Fuel Company, organized under the general laws of the state of Texas with a capital stock of \$2,105,400, deals in oils and fuel. The record does not disclose the extent of its activities or describe the general territory in which it operates. It appears, however, that since the date of its organization in 1901 it has been engaged in the distribution and sale of oils and similar merchandise in and around Beaumont and at other points on the Neches and Sabine rivers, in the state of Texas, as well as at Galveston and other ports on the Gulf of Mexico.

In the conduct of its business it is able to use barges and towboats to advantage in transporting oil along the Gulf coast between Galveston, Morgan City, and other points, and to some extent on the rivers above mentioned. It had therefore equipped itself with a number of such barges and with one or more towboats. When the ship canal from Port Arthur to the Neches River was opened in 1907

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the company found that its larger deep-draft barges, theretofore employed only on the waters of the Gulf, could be run through to Beaumont. In order that its light-draft barges might be put to profitable use and for other and probably more controlling reasons, as will hereinafter appear, it organized under the Texas laws a corporation known as the Gulf Coast Navigation Company, the complainant herein, with a capital stock of \$15,000. In exchange for the stock the oil company turned over to the new company one tow-boat and three light-draft barges. Of the stock of the new company the Higgins Oil & Fuel Company directly owns 145 shares; the remaining 5 shares stand on the records of the complainant company in the names of officers or stockholders of the Higgins Oil & Fuel Company, doubtless to qualify them as directors of the complainant company.

The Gulf Coast Navigation Company is now before us seeking an order requiring the Kansas City Southern and its allied line in Texas, known as the Texarkana & Fort Smith Railway Company, to join with it in the establishment of through routes and joint rates on crude petroleum oil from producing points, in what is known as the Caddo oil field of northern Louisiana, to Galveston, Sabine, and Orange, and to various landings on the Neches and Sabine rivers and on their tributaries and bayous. All these points are in the state of Texas. It also demands a through route and joint rate from the same points in the oil field to Morgan City in the state of Louisiana. This route, if established over the lines of the defendants in connection with the complainant, would extend partly outside the state of Louisiana and would therefore constitute an interstate movement, although the oil field and Morgan City lie within the same state.

In demanding through routes and joint rates the complainant also asks that the point of interchange shall not be at Beaumont, but at a point about two miles south of Beaumont on the line of the Texarkana & Fort Smith called Higgins Spur. At this point the main line of the defendant is about 1,000 feet distant from the Neches River. It seems to be nothing more than a private station of the Higgins Oil & Fuel Company, which there has a spur track connected with the defendant's line. This track does not reach the river where the Higgins Oil & Fuel Company has a landing, but the complainant proposes and offers in the petition to transfer the oil at its own expense from the cars to its barges by means of a pipe line heretofore constructed by the Higgins Oil & Fuel Company from the end of the spur track to its boat landing.

In asking for an order establishing through routes and joint rates with the defendants between the points hereinbefore referred to, the complainant in its petition prays that the use by shippers of the routes

and rates so established shall be limited by certain terms and conditions which the Commission is requested to embody in its order. Among other conditions the Commission is asked to require that consignees desiring to take advantage of the services of the complainant shall have tankage facilities to receive not less than 4,000 barrels of oil at a time; and not less than a 4-inch pipe from the boat landing to their tanks; and a safe landing for boats drawing as much as 13 feet of water. We are also asked to embody in the order a condition that the complainant shall not be compelled to carry oil to the destinations in question, except in cargo lots or when they have as much as a cargo to move. They also ask that shippers shall be required to give them ten days' written notice prior to the date of the movement, stating the service desired and the quantity of oil to be carried. The petitioner demands also a provision in the order to the effect that the shipments shall be at the owner's risk in transit after leaving the rail line, and that the identity of the oil need not be preserved, but that consignees shall be entitled to receive at destination only the average grade of all the shipments made at the same time, the complainant to be required to carry in bulk only and the shipper to assume the damage resulting from the mixture of his oil with other crude oils. The significance of these requests is emphasized by the fact that since the petition was filed the complainant has disposed of two barges, leaving available for the fulfillment of its obligations as a common carrier but one barge and one tugboat; but it is said that to meet emergencies the complainant may charter barges from the Higgins Oil & Fuel Company or others, on a trip, per diem, or percentage basis. It was suggested at the hearing, however, by the examiner before whom the testimony was taken, that the complainant would have to withdraw its demands for these terms and conditions surrounding the use of the through routes and joint rates which it desired the Commission to establish; and it is understood that the complainant now asks for an order without any attendant and qualifying conditions of that character.

It is insisted that the complainant company was organized with the bona fide purpose of doing a general transportation business and for carrying freight of all kinds for the general public. We are advised that it has moved occasional shipments of railway ties across the Gulf waters and between points on the Gulf. There are said to have been six such shipments, aggregating 47,816 ties, made during the five months ending May 29, 1909. We are also told that 150,611 ties, together with 199,000 feet of lumber, were carried across the waters of the Gulf during the period from October 1, 1909, to June 30, 1910. It is asserted that other movements of forest products are being actively solicited, and that the complainant is prepared to

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transport, and has an assurance of receiving for carriage, a substantial quantity of petroleum that will come into competition with the operations of the Higgins Oil & Fuel Company. It was stated upon the argument that the complainant is now carrying crude oil to the extent of from 15,000 to 20,000 barrels a month from Sabine and Port Arthur to Galveston for other companies. It is said that out of a gross revenue of \$11,360.22 for the three months ending December 31, 1909, as much as \$2,416.04 was derived on traffic in which the Higgins Oil & Fuel Company had no interest. The remainder of \$8,944.18 was contributed to the complainant, however, by the last-named company for petroleum transported on its own account.

While Sabine, Galveston, Morgan City, and Orange are established communities, they are all well served, so far as this record advises us, by the regular rail lines over through routes and under charges for the through movement that have not been complained of so far as now appears. The two or three landings on the Sabine River to which through routes and joint rates are desired by the complainant are approximately five miles from any railroad station, but they appear to be private landings. Most, if not all, the landings on the Neches River to which through routes and joint rates are desired by the complainant boat line are also private landings appurtenant to rice or other plantations, and none is more than two and one-half miles distant from regular stations on the line of the defendant; two such points being shown by the record to be not in excess of three-fourths of a mile and one about one-half mile distant from a freight station of the defendant. To Beaumont, Port Arthur, Sabine, and intermediate points oil is moved from the Caddo field under an 8-cent rate. This is also the rate to Higgins Spur, at which point the Higgins Oil & Fuel Company has heretofore received and is now receiving from the Caddo wells oil which is later sold and delivered at these landings on the Neches and Sabine rivers in the barges of the defendant company. The complainant now asks that we order into effect a 10½-cent joint through rate to these private landings through Higgins Spur and establish its division thereof at 5½ cents per 100 pounds, thus diminishing the present earnings of the defendants by 2½ cents. It undertakes under that division of the rate to do what it has heretofore been doing at its own expense, namely, to unload its oil cars into its oil barges and carry it to its customers at the several landings that have been mentioned. The average haul from the oil field to Beaumont is from 230 to 235 miles. The private landing on the Neches River most distant from Higgins Spur seems not to be more than 10 or 11 miles away; those on the Sabine River are probably as much as 20 or 22 miles distant from the complainant's landing at Higgins Spur.

We do not find from the record that any such facts have been disclosed as will warrant the exercise of the authority of the Commission to establish through routes and joint rates. The Higgins Oil & Fuel Company, when it owned and operated the tug and barges which it later turned over to the complainant, availed itself of these two rivers as an economical method of distributing its oil to its customers, just as it may and probably does avail itself, as other oil companies generally do, of the roads and turnpikes to distribute its oil in tank wagons to customers living at even more distant points. We do not see that the distribution of its oil to its customers at private landings along the river is any more a service of transportation now that it has transferred its tug and barges to a boat line that it owns than it was when it owned the tug and barges directly. At any rate the mere fact that the towboats and barges of the Higgins Oil & Fuel Company have been turned over to a corporation owned by it and purporting to be a common carrier, and which is able to pick up some actual transportation for other interests over other waters, is not conclusive of its right to compel the defendants to contribute to the expense of distributing its oil and similar products at these private landings and thus to impair their own earnings. The record gives us no assurance that there is any outside traffic for this complainant to carry from Higgins Spur to the private landings in question, nor does it give the shipping public any assurance that it will establish a regular schedule of sailings for such outside traffic if any exists. Under such circumstances, and in view of the responsibilities attached to initial lines under section 20 of the act, we see no foundation for an order in accordance with the prayer of the complaint. So far as the record gives us any indication the only result flowing from such an order will be to enable the Higgins Oil & Fuel Company to receive its oil at Higgins Spur at less than the present rate and to secure from the earnings of the defendants, the reasonableness of which is not here attacked, a contribution toward the expenses of distributing its oil to its customers.

The complaint must be dismissed and it will be so ordered.

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No. 2146.
NORTHERN ANTHRACITE COAL COMPANY
 v.
**DELAWARE, LACKAWANNA & WESTERN RAILROAD
 COMPANY.**

Submitted November 1, 1910. Decided November 14, 1910.

Defendant's present separately established rates per gross ton for the transportation of semianthracite coal, originating at Bernice, Pa., from Waverly, N. Y., to Binghamton, N. Y., found unreasonable, and reasonable rates prescribed for the future.

R. W. Rymer, M. J. Murray, jr., and M. J. Martin for complainant.
J. L. Seager, Douglas Swift, and A. S. Learoyd for defendant.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This case presents the question of reasonableness of defendant's separately established rate of 75 cents per gross ton for the transportation from Waverly, N. Y., to Binghamton, N. Y., of carload shipments of semianthracite coal originating at Bernice, Pa.

Complainant operates a coal mine at Murray, about 3½ miles from Bernice, from which last-named point the Lehigh Valley Railroad Company maintains a switch connection to the mine. It is 47 miles from Bernice to Waverly, where coal from complainant's mine destined to Binghamton is turned over to the defendant railroad, which is the delivering line. The proportional rates of the Lehigh Valley from Bernice to Waverly are 75 cents on prepared sizes and 60 cents on pea and buckwheat sizes and screenings per gross ton. These rates include the haul from the mine to Bernice over a stretch of road having many sharp curves and heavy grades. The Lehigh Valley delivers the coal on a switch siding of the Delaware, Lackawanna & Western at Waverly, from which point to Binghamton the distance is 39 miles, and for the haul from Waverly to Binghamton defendant's separately established proportional rate is, as above stated, 75 cents per gross ton on all sizes of coal and is the same to all stations between Waverly and Binghamton.

The bulk of the shipments is of the pea and buckwheat sizes and screenings, upon which 60 cents is the separately established proportional rate of the Lehigh Valley from Bernice to Waverly. The

total charge, therefore, on coal of these sizes from Bernice to Binghamton is \$1.35. The local rate of the Lehigh Valley from Bernice to Waverly is \$1.15 on prepared sizes and \$1 on pea and buckwheat sizes and screenings, and the local rate from Waverly to Binghamton by defendant's lines is \$1.23 on all sizes.

This coal is a semianthracite and is much more friable than either genuine anthracite or bituminous coal. About 45 per cent of the output of the mine is screenings. The larger sizes of this coal enter into competition with genuine anthracite, while the screenings are sold in competition with bituminous coal. The delivered prices at Binghamton vary from \$2.35 to \$3 per ton and are usually from 50 cents to \$1.25 less than that of the genuine anthracite. Anthracite proper sells delivered at Binghamton for about \$5.80 a ton, while the semianthracite in the prepared sizes sells for about \$4.80. The screenings sell for about \$2.10, while the bituminous slack sells for about \$2.30. In order to use the semianthracite screenings for steam purposes about two parts thereof are mixed with one of bituminous slack.

From Blossburg, Pa., to Binghamton, N. Y., via the Erie, Elmira, and the Delaware, Lackawanna & Western Railroad, a distance of 103 miles, the rate on bituminous coal is 95 cents, and for Delaware, Lackawanna & Western delivery via the Erie, a distance of 104 miles, the rate is 75 cents. Some of the coal from complainant's mine reaches Binghamton via the Lehigh Valley and the Erie, the total charges being the same as when the traffic moves over the Lehigh Valley and the Delaware, Lackawanna & Western, but the rates neither of the Erie nor of the Lehigh Valley are complained against in this proceeding.

It is the finding and conclusion of the Commission upon consideration of all the facts, circumstances, and conditions appearing that the defendants' separately established rate of 75 cents per gross ton for the movement of the traffic here involved from Waverly to Binghamton, N. Y., is unreasonable and unjust and that the same results in the exaction of unreasonable charges for the through transportation of coal from Bernice to Binghamton. It is our further finding and conclusion that the said rate of 75 cents is unjust and unreasonable to the extent that the same exceeds 65 cents per gross ton on prepared sizes of the coal in question, and 55 cents on the sizes designated as pea, buckwheat, and smaller sizes, including screenings, and that the future maximum rates to be charged shall not exceed those last-above indicated.

An order will be entered in accordance with these findings and conclusions.

No. 1126.
WYMAN, PARTRIDGE & COMPANY ET AL.
v.
BOSTON & MAINE RAILROAD ET AL.

Submitted November 2, 1910. Decided November 14, 1910.

Reparation awarded in favor of the principal complainants against certain lake-line defendants for damages on shipments of merchandise because of unreasonable rate advances to cover marine insurance protection which was never given. *Joyes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, cited and distinguished.

Dodge & Webber for complainants.

Kretzinger, Rooney & Kretzinger for Canada-Atlantic Transit Company and Port Huron & Duluth Line of Steamers.

O. E. Butterfield and *Howard T. Ballard* for Western Transit Company.

Charles M. Heald for Mutual Transit Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, *Commissioner*:

This is a supplemental petition asking reparation. In order to understand the question presented it is necessary to have in mind the original proceedings. 13 I. C. C. Rep., 258; 15 Ib. 577 (rehearing).

At the beginning of navigation in 1907 rail and lake rates from the Atlantic seaboard and other eastern points of origin to Chicago, Duluth, St. Paul, and other western destinations were advanced by varying amounts, beginning with three cents, first class. Thereupon complaint was filed by Wyman, Partridge & Company and other shippers against the carriers exacting the higher charges, for the purpose of compelling a restoration of the original tariffs.

The so-called Harter Act provides that water carriers may by contract exempt themselves from liability for perils of the sea, and most bills of lading covering water-borne traffic do, in point of fact, contain such an exemption. To secure protection against loss from perils of the sea, shippers upon the Great Lakes by these lake and rail lines had been accustomed, previous to 1907, to take out marine insurance covering their individual shipments. The tariffs by which

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these advanced rates were established in the spring of 1907 stated that insurance against perils of the sea, while the traffic was water-borne upon the Great Lakes, would be provided by the carriers for the benefit of shippers, and the carriers claimed that the purpose of these advances was to cover the cost of this marine insurance which they, for the first time, furnished as a part of the rate.

It appeared that the cost of the insurance to the carriers or to the shippers was much less than the amount of the advances, but the Commission, upon full consideration, was of the opinion that the advanced rates should be permitted, provided the shipper was given that protection against sea peril which the tariffs professed to accord.

It was found, however, that neither the tariff on file nor the bill of lading under which the traffic moved, nor the insurance which was taken out by the carrier did give the shipper the protection which he had formerly obtained under his policy of marine insurance, and the Commission announced that unless certain changes were made in tariff and in bill of lading, which seemed necessary to secure to the shipper this protection, the original rates would be restored. Certain changes were made by the carriers during the season of 1908, but these were not satisfactory to the complainants and were not fully approved by the Commission. In the season of 1909 the tariffs and bills of lading of the carriers were brought into conformity with the views of the Commission and have since been in effect.

During the season of 1907 great uncertainty prevailed among shippers as to the character and extent of the protection afforded by the insurance which the carriers professed to have effected. Wyman, Partridge & Company, who are large shippers, not being satisfied, after inquiry, that they had any adequate protection, proceeded to insure their shipments during the season of 1907, exactly as they had done during previous seasons. This petition seeks to recover by way of reparation the amounts paid by that company for this insurance.

The first ground of objection is that these complainants, by not having insisted upon this reparation in the original proceeding, have lost the right to do so at this time and in this manner.

The original complaint alleged that the advanced rates were unreasonable and asked reparation on account of the advance. The Commission held that the rates were unreasonable unless the carriers provided suitable indemnity against perils of the sea, and stated that, in default of such action by the carriers, the original rates would be restored. It was not finally determined whether the carriers would take this action and whether, therefore, the rates would be allowed to stand until the spring of 1909. This petition was filed April 27, 1909, very soon after the final disposition of the original complaint and within two years from the moving of the traffic involved and from the date of the payment of the insurance

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premiums. In view of these facts it would appear that the complainants have acted with reasonable diligence in the presentation and prosecution of their claim.

The serious question is whether damages of this kind can be awarded. The Commission held in *Joyes v. P. R. R. Co.*, 17 I. C. C. Rep., 361, that it had no jurisdiction to give general damages, but could only award rate damages. Are these damages rate damages within the meaning of that case?

The Commission found that the rates prescribed by the defendants were unreasonable, for the reason and to the extent that the carrier failed to provide protection against loss from perils of the sea. Had the defendants by their tariffs and bills of lading or by some adequate form of insurance provided this protection the rates would have been reasonable. In the opinion of the Commission, no such protection was provided either by the tariff or by the bills of lading or by the insurance which was effected. It was plainly the right therefore of Wyman, Partridge & Company to take out themselves marine insurance, and thereby to secure the protection to which they were entitled and which the defendants had not supplied.

The exact measure of the difference between the rate which was exacted and the rate found to be reasonable by the Commission was the amount paid to secure this insurance. Clearly by the exaction of that unreasonable rate the complainants have been damaged in precisely this sum.

We find that the complainants shipped during the season of 1907 over the lines of the defendants various consignments of merchandise which need not be stated in detail; that the defendants exacted and the complainants paid an unreasonable freight charge for such service; that the difference between the rate exacted and that which should have been paid by the complainants as applied to the shipments made is the sums named below, and that the defendants, by the exaction of these unreasonable charges, have damaged these complainants in those sums.

The rates in question are joint through rates to which both the lake lines and the rail lines are parties. It is conceded, however, that the lake lines have received the entire advance and that the order for reparation should issue against them alone. The amounts are as follows:

Mutual Transit Company.....	\$763.02
Western Transit Company.....	479.88
Port Huron & Duluth Line of Steamers.....	46.69
Canada-Atlantic Transit Company	335.13
Total.....	1,624.72

Interest should be allowed in all cases from November 1, 1907.

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No. 3109.
HYDRAULIC-PRESS BRICK COMPANY
v.
ST. LOUIS & SAN FRANCISCO RAILROAD COMPANY ET AL.

Submitted September 19, 1910. Decided December 5, 1910.

Rate on enameled brick found unreasonable. Reparation awarded.

*Stewart, Eliot, Chaplin & Blayney, by W. S. Bedal, for complainant.
F. H. Wood, by Edward A. Haid, for defendants.*

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant is a corporation engaged in the manufacture and sale of brick, with principal office at St. Louis, Mo. The complaint alleges that the rate of 15.1 cents per 100 pounds charged on seven carloads of enameled brick, weighing 402,500 pounds, shipped between April 22, and November 12, 1908, from Cheltenham, Mo., to Chicago, Ill., was unjust, unreasonable, unduly discriminatory, and prejudicial to the extent that it exceeded 8 cents per 100 pounds, and reparation in the sum of \$285.77 is asked.

Defendants admit that the shipments were made as alleged in the petition.

Prior to April 20, 1908, the rate on enameled brick from St. Louis, Mo. (applicable from Cheltenham, which is within the switching limits of St. Louis, by absorption of switching charges), was 7 cents per 100 pounds. When shipments were made there was no commodity rate in effect and a class rate of 15.1 cents per 100 pounds was charged. Effective March 15, 1909, a commodity rate of 8 cents per 100 pounds, applicable to enameled brick, carloads, was established. Defendants allege, however, that the commodity rate was forced by competition and is unreasonably low.

Complainant rests its case on the fact that there was no commodity rate at the time of shipment, the fact of the voluntary reduction of the rate to 8 cents, and the fact that the rate on pressed brick was

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continuously during the time within which these shipments were made, and is now, 7 cents per 100 pounds.

The commercial value of enameled brick is greater than that of pressed brick, but owing to the care with which the former are loaded into the cars, they are less liable to damage. The rates on enameled brick are generally higher than on pressed brick. In some cases, however, the rates are equal. From the whole record, we are of the opinion that the rate of 15.1 cents per 100 pounds on these shipments was unjust and unreasonable to the extent that it exceeded 8 cents per 100 pounds, and that complainant is entitled to reparation in the sum of \$285.77, with interest from November 12, 1908.

We are also of the opinion that for the future the rate on enameled brick, carloads, from Cheltenham, Mo., to Chicago, Ill., via the lines of defendants, should not exceed 8 cents per 100 pounds.

It will be so ordered.

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No. 3208.
PROCTER & GAMBLE COMPANY
v.
**CINCINNATI, HAMILTON & DAYTON RAILWAY
COMPANY ET AL.**

Submitted October 19, 1910. Decided November 14, 1910.

Complainant objects to defendants' rule as to demurrage charges in so far as it provides for demurrage on private cars while standing on private tracks, and particularly to the provision that if private cars are returned under load the railroad service is not at an end until the lading is removed; *Held*, That defendants are within their lawful rights in establishing and maintaining the rule complained of.

George H. Warrington for complainant.

Herbert Scoville for Indian Refining Company, intervener.

Edward Barton for Baltimore & Ohio Southwestern Railroad Company and Staten Island Rapid Transit Railway Company.

R. Walton Moore for Norfolk & Western Railway Company.

Evans Browne for Kansas City Southern Railway Company and Kansas City Terminal Company.

REPORT OF THE COMMISSION.

CLARK, Commissioner:

Complainant owns large industrial plants at Ivorydale, Ohio, Port Ivory, N. Y., and Kansas City, Kans. In each of these plants it owns, maintains, and operates private tracks located upon its own land for use in, and for the purpose of, switching cars between the interchange tracks connecting with the lines of defendants and the various loading and unloading places within the plants. At Ivorydale and at Port Ivory complainant owns its own locomotives and performs the entire switching service within the plants. At the Kansas City plant all internal switching service is performed by a railroad company.

Complainant owns and has in service for the transportation of commodities used by it in its business some 500 oil-tank cars, which are used by defendants under a tariff which provides, among other

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things, that when tank cars are furnished by shippers or owners, mileage at the rate of three-fourths of one cent per mile will be allowed by defendants for the use of such tank cars, loaded or empty.

Defendants' tariffs of demurrage charges contain the following rule, which this complaint alleges to be unreasonable and unjust:

NOTE.—Private cars while in railroad service, whether on carrier's or private tracks, are subject to these demurrage rules to the same extent as cars of railroad ownership.

(Empty private cars are in railroad service from the time they are placed by the carrier for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and cars are regularly released. Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks, and thereby tendered to the carrier for movement. If such cars are subsequently returned empty, they are out of service when withdrawn by the industry from the interchange; if returned under load, railroad service is not at an end until the lading is duly removed.)

Complainant objects to the rule quoted, in so far as it provides for demurrage on private cars while standing on private tracks, and particularly to the provision that if private cars are returned under load railroad service is not at an end until the lading is removed. It contends that after such cars have been removed from the interchange tracks and placed upon private tracks they are no longer in railroad service, but are private property in the possession of the owner, to be used as he will; that the railroads have no interest in the tracks upon which the car then stands; that they have ceased to pay rental or mileage for the use of the car; that they are in no way responsible for the car, and can have no interest in it until it is again placed on the interchange tracks and tendered for shipment; that they can not require the owner to place the car again in service, and that the owner receives nothing from the railroad for the use of the car except when it is actually upon the railroad company's tracks. It is stated that upon arrival of car under load it may be unloaded and the railroad company be notified that car has been unloaded, and if owner so elects he may again load the car and use it for storage purposes as long as he chooses, and that no possible benefit comes to either the carrier or the public through the performance of this unnecessary labor.

Complainant alleges that the railroads do not attempt to provide themselves with tank cars, and that the shipper is therefore forced to provide tank cars himself or ship in barrels in the railroad's equipment. It calls attention to the fact that on outbound loads defendants' rules and practices take no cognizance of the private car until it is placed upon the interchange track for movement by defendants, while on inbound loads they provide for the collection of

demurrage after the car has been taken from the interchange tracks to the owner's tracks within the plant.

The Indian Refining Company, a corporation engaged in the manufacture and sale of petroleum and its products, with principal offices at Cincinnati, Ohio, and refineries and distributing plants at several points in various states, intervened in support of complainant's contention.

There is no controversy as to the facts. Defendants argue that the demurrage rules as a whole have received careful and exhaustive consideration at the hands of those best qualified to pass upon them; that no obligation rests upon complainant to furnish cars, and that if he elects to do so, such cars must be subject to such reasonable rules and regulations as may be fixed by the carriers or the Commission, or by statute.

In *Interstate Commerce Commission v. I. O. R. R. Co.*, 215 U. S., 452, it was held that this Commission has the power to require that private cars be taken into account by carriers in determining an equitable distribution of cars among shippers. The Commission's finding that if the private cars or specially consigned cars delivered to the owner or consignee equal or exceed his pro rata share of the available equipment at that time he may not be given additional cars from the carrier's equipment was upheld. Surely any arrangement for the use of private cars which causes, or results in, undue preference or unjust discrimination is repugnant to the underlying principle, as well as in conflict with the terms, of the act.

Defendants contend, and with much force, that the decision of the Supreme Court above referred to fully sustains the demurrage rule here complained of; that otherwise an industry having a supply of its own cars could insist that when such cars went on its private tracks they were entirely out of service and might not be considered as any part of the equipment, and it could therefore demand from the railroad company an additional supply of cars, contending that its own should not be treated as cars in commerce, but as buildings for storage, and, having so secured the desired equipment from the railroad company, it could again put its own cars into service, and thus defeat the operation of any fair rule for distribution of equipment.

Defendants urge that complainant voluntarily provided itself with these cars; that it has put them into the service of the carriers under defendants' tariff rules which provide, on the one hand, for the payment to complainant of mileage on its cars, and, on the other hand, for demurrage on said cars, and that complainant may not accept one provision of the tariff and reject the other.

Defendants' demurrage rules are what are commonly termed the "Uniform Demurrage Rules." They were prepared by a committee of the National Association of Railway Commissioners, composed

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of a representative from each state that has a railroad commission, and a member of the Interstate Commerce Commission. The rules were fully considered and then adopted by the convention of the association, and were later approved, but not prescribed, by this Commission. In its report to the convention this committee said that the rule here complained of "Is our unequivocal reply to the demand that private cars be accorded special privileges and immunities," and—

The utterly chaotic condition in which we found the private-car problem calls for a careful and dispassionate inquiry into fundamental principles. Beyond all doubt, the present confusion is to be charged directly to what a distinguished railroad official naively terms "those exceedingly indefinite arrangements between carriers and shippers respecting employment of private cars." It is a standing reproach to the railroad world that these contracts for the use of private cars should be so indefinite that the parties can dispute endlessly as to their terms. The situation would be ridiculous were it not so fraught with evil. Your committee is agreed that the carriers' regularly published tariffs should set forth in detail the terms under which private cars will be employed, and they should expressly stipulate that private cars while in railroad service shall be subject to the same demurrage rules as the carriers' regular equipment.

In a report made by the Committee on Car Distribution and Car Shortage to the preceding convention of the National Association of Railway Commissioners, the position that had been taken by the courts and by the Interstate Commerce Commission was epitomized as follows:

It is the carrier's duty to furnish all facilities of transportation, and it can not permit the presence of any equipment upon the line to work a discrimination as between shippers.

Referring to the above quotation, the committee which formulated the demurrage rules said:

That this is and ought to be the law will scarcely be disputed. Here, then, is the criterion by which the merits of any private-car rule must be determined. * * * It is urged that private cars be exempt when standing on private sidings. If this suggestion were adopted, the coal dealer who derives his supply from mines which ship in private equipment could hold the cars for days, if need be, and team directly to his customers, while his competitor who is served by railroad cars must unload promptly or suffer the demurrage penalty. The rule not only gives unlawful advantage to the consignee who receives his freight in cars of private ownership, but by putting a premium upon the use of private cars unduly prefers the consignor. * * * It is next suggested that private cars on private sidings be exempt from demurrage when the owners of the cars give their consent. This suggestion has all the vices of the one preceding it, with the additional fault, peculiarly its own—it puts it within the power of the car owner to discriminate as between consignees.

When a private car is employed by a carrier in lieu of its own equipment as an instrumentality of transportation it is thenceforth not a private car, but a railroad car; it does not regain its status as a private car until, after transportation is concluded, it leaves the carrier's service. * * *

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The contract under which the car enters the carrier's service is a thing altogether apart from the carrier's undertaking to transport the owner's freight. In the one case the car owner by supplying the instrumentality of transportation assists the carrier to discharge its public function; in the other his status is that of an ordinary consignor or consignee.

A car owner can claim no advantage as a shipper that would not accrue to him if the car were owned by a different person having no interest in the freight.

The State of New York Public Service Commission, second district, recently held that the rule complained of was, in the instance under consideration, unreasonable, but it said:

We decide simply that the private car returning to the home plant under load is not subject to demurrage after the loaded car has been delivered to the owning industrial company and been taken by that company upon its exclusively owned and operated tracks.

Complainant goes further than to assert its right to be relieved from demurrage on its own cars when standing upon its own tracks within its own works, and asserts that a privately owned car while standing upon a privately owned track should be free from demurrage, even though the car were owned by one private interest and the track by another private interest. In other words, that owners of private tracks and owners of private cars should be permitted to exchange courtesies, and by mutual consent so relieve cars from the demurrage rules of the carriers. It seems obvious that the acceptance and application of that theory would involve all of the elements of undue preference and unjust discrimination.

The rule which defendants apply to complainant's cars is the same as that applied to all other privately owned tank cars, and the only question seems to be whether or not the demurrage rule is a condition attached to the use of the privately owned cars, which defendants may lawfully maintain.

Manifestly, the law does not impose upon defendants the obligation of hauling complainant's private cars. If used, it must be under an arrangement which is subscribed to by both, and which is stated definitely in defendants' tariffs. These defendants have said in their tariffs that they will use the privately owned cars and pay three-fourths of one cent per mile for such use, and will subject them to the demurrage rules. Complainant, having its cars in use under those conditions, now asks that we relieve it from one of the conditions, which defendants are unwilling to relinquish.

We are of the opinion that defendants are within their lawful rights in establishing and maintaining the rule complained of.

The complaint will be dismissed.

No. 3149.
CROMBIE & COMPANY ET AL.
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted November 12, 1910. Decided December 5, 1910.

A classification named same rating on "pepper" as on "chile pepper." Subsequently a commodity rate on "pepper" was established; *Held*, That commodity rates should be strictly applied and that such a rating on "pepper" does not take out of the classification any other article specifically named therein, however analagous, such as "chile pepper."

Rufus B. Daniel for complainants.

Baker, Botts, Parker & Garwood, F. C. Dillard, E. S. Ives, William F. Herrin, P. F. Dunne, C. W. Durbrow, and R. S. Stubbs for defendants.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Complainants, who are severally engaged in the wholesale grocery, wholesale fruit, or wholesale produce business at El Paso, Tex., allege that they paid \$342.28 in excess of the tariff rate on numerous less-than-carload shipments of whole and ground chile pepper from San Francisco, Los Angeles, Tustin, and Anaheim, Cal., to El Paso, Tex., during the period from March 7, 1908, to November 12, 1909. Complaint was filed March 4, 1910. The rate charged was \$2 per 100 pounds, the second class rate under Western Classification. Complainants claim that a commodity rate of \$1.25 per 100 pounds on pepper in less than carloads should have been applied, their contention being that the term pepper is broad enough to cover all kinds of pepper including chile pepper.

The Western Classification, within the territorial jurisdiction of which all the shipments in question moved, specifically applies second-class rating upon pepper; also upon chile, ground, or in natural state, and upon chile powder. This classification of each of the commodities in question under the same class rating was in effect during, and has remained in effect since, the period covered by complaint. The

carriers had also established a specific commodity rate on pepper between California points and El Paso, and the Commission has ruled that the publication of a commodity rate removes the commodity from the application of the classification. No specific commodity rate has been published for the transportation of chile or chile powder as such. Therefore, charges upon shipments of the latter commodity, in whatever form, were correctly assessed under the classification rating at \$2 per 100 pounds.

Some testimony was adduced to prove that chile is merely a species of the genus pepper and that, therefore, the commodity rate should have been applied indifferently. But a commodity rate should be applied strictly; and where, in the original classification, provision is separately made for two articles, closely resembling each other in form and nature, and a commodity rate is subsequently established naming one of such articles, the commodity rate so established can not be applied on the similar article specifically named in the classification, but not specifically named in the commodity tariff.

The petition alleges in respect of the \$2 rate on chile that "said rate was when exacted, ever since has been and still is, excessive, unreasonable, and unjust, and that a just and reasonable rate for such transportation would not exceed a rate of \$1.25 per 100 pounds;" but no testimony was offered in support thereof. The complaint is dismissed with the finding that complainants were charged the legal rate.

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No. 3226.

JOHN T. BOWLES AND JESSE McCANDLESS, PARTNERS,
DOING BUSINESS AS BOWLES & McCANDLESS,

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

Submitted October 27, 1910. Decided December 5, 1910.

Reparation awarded complainants for damages caused by defendant's publication and maintenance of an unlawful and excessive rate for the transportation of sheep in double-deck cars from Louisville, Ky., to Columbia, Tenn.

George Weissinger Smith for complainants.*W. A. Northcutt* for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainants are partners dealing at Louisville, Ky., in cattle and sheep. In their complaint (filed April 8, 1910) they ask reparation because of damage said to have been suffered by them in connection with certain shipments of sheep over defendant's line from Louisville, Ky., to Columbia, Tenn. The material facts are undisputed and may be briefly summarized as follows:

Defendant's rate on sheep, in single or double deck cars, from Louisville to Columbia, was \$40 per car from June 9, 1901, to September 4, 1907, as published in its tariff, I. C. C. No. A-8551. On the latter date, by amendment No. 43 to said tariff, the rates in question were increased to \$44 for a single-deck car and \$134 for a double-deck car. The publication of the \$134 rate is admitted by defendant to have been an error on the part of those in charge of its tariff publication, which escaped notice and was not corrected until the issue of its tariff, I. C. C. No. A-11282, effective January 23, 1910, which restored the \$40 rate upon both classes of equipment.

On June 22, 1908, complainants shipped 2, on June 29, 1908, 2, on July 12, 1908, 2, and on June 13, 1909, 4 single-deck carloads of sheep from Louisville to Columbia. Complainants allege and defendant

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admits that the 10 carloads of sheep could have been loaded into 5 double-deck cars. The evidence is undisputed that complainants asked to have their shipments transported in double-deck cars at the \$44 rate; that defendant was able and willing to furnish double-deck cars, but informed complainants that the charge would be \$134 per car, in accordance with its tariff; and that complainants elected to ship in 2 single-deck cars, at a total expense of \$88 for 2 carloads, what they desired to ship in a double-deck car under a \$44 rate. Reparation is asked in the difference between the total charges paid by complainants on the 10 carloads and the amount which they would have paid had the sheep been carried in double-deck cars at the rate applicable to that equipment prior to September 4, 1907, and subsequent to January 23, 1910.

Upon all the facts and circumstances disclosed by our investigation we are of opinion that complainants are entitled to reparation. It is true that no complaint is made respecting the single-deck rate *per se*, and that complainants did not pay the double-deck rate. Nevertheless in electing to ship in single-deck cars complainants adopted the only feasible method of avoiding an unconscionable and admittedly unlawful charge, and even then they were obliged to pay double the amount for which they ought to have obtained the desired transportation. We are convinced that but for the unlawful act of defendant in maintaining an exorbitant rate complainants would have shipped their sheep in double-deck cars. The damage suffered by complainants was the direct consequence of a violation of the act to regulate commerce and may be measured by the difference in rates. It follows that the reparation asked is such as may be awarded by the Commission.

Complainants paid aggregate freight charges upon the shipments above mentioned of \$440. We find that a reasonable charge for transportation of the sheep in the class of equipment requested by complainants would have been \$220 (5 double-deck cars at \$44 per car), and that complainants are entitled to reparation in the sum of \$220, with interest from June 30, 1909. An order will be entered accordingly.

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No. 2541.
S. RUNNING
v.

CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY
COMPANY.

Submitted October 22, 1910. Decided December 5, 1910.

Complainant asks reparation in the amount represented by the difference between the published rate charged on his shipments of strawberries from Menomonie Junction, Wis., to St. Paul, Minn., and the rate which he understood to be in force; but in the absence of any proof that the rate exacted was or is unreasonable for the exclusive use of an iced refrigerator car between the points of shipment and destination, the complaint must be dismissed.

S. Running for complainant in person.

E. B. Ober for defendant.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainant is engaged in farming and fruit growing at North Menomonie, Wis. By complaint filed June 2, 1909, he questions the reasonableness of the charges exacted by defendant for the transportation of five shipments of strawberries during June and July, 1908, from Menomonie Junction, Wis., to St. Paul, Minn.

The controversy which resulted in this proceeding was due to a misunderstanding by complainant of the rates applicable to his shipments. He received the impression that his less-than-carload shipments of berries would be carried to St. Paul in a refrigerator car by fast freight at a rate of 20 cents per 100 pounds, assessed upon a minimum weight of 10,000 pounds, or \$20 per car. As a matter of fact, the rate charged, in accordance with defendant's tariff was 35 cents per 100 pounds upon a 10,000-pound minimum, or \$35 per car. Complainant asks reparation in the amount represented by the difference between the published rate and the rate which he understood to be in force.

Western Classification rates berries in carloads third class, minimum carload weight 20,000 pounds, and in less than carloads first 19 I. C. C. Rep.

class. The first and third class rates from Menomonie Junction to St. Paul are, respectively, 35 and 20 cents. Western Trunk Line Tariff, I. C. C. No. A-1, in force at the time of movement of these shipments and applicable thereto, contains the following rule:

When shippers can not avail themselves of the regularly scheduled refrigerator-car service, refrigerator cars may be furnished, provided 10,000 pounds or more are loaded therein, at the less-than-carload rate. Under such circumstances no charge will be made for initial icing or reicing.

A so-called "way freight" was scheduled to leave Menomonie at 9.50 a. m., reaching St. Paul at 4.05 the same day; but this service was unsatisfactory to complainant because he desired to pick his berries in the afternoon and have them in the St. Paul market the following morning. Had the berries been transported on the way freight they would not have reached St. Paul until the second day after they were picked. The refrigerator cars placed for complainant's use were picked up at night by a through train and delivered in St. Paul in time for market the following morning. Complainant was satisfied with the service rendered by the carrier, and apparently was willing to pay \$20 per car as compensation; but in view of the fact that his shipments ranged in weight from 1,826 to 4,246 pounds each, he would have found it less expensive to ship them by express, and would have done so had he known the charge would be \$35 per car.

It is certain that complainant misunderstood the application of the rate and the conditions attached thereto. Errors of this nature are unfortunate, but they do not afford a basis for reparation. In the absence of any proof that the rate exacted was or is unreasonable for the exclusive use of an iced refrigerator car between the points of shipment and destination the complaint must be dismissed, and it will be so ordered.

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No. 8115.

HENRY A. KLYCE COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL

Submitted August 24, 1910. Decided December 5, 1910.

When bankruptcy proceedings discontinued operation of a milling plant that was using a transit privilege, it developed that there were on hand large numbers of inbound expense bills and practically no corresponding tonnage of grain or grain products entitled to transit rates; *Held*, That such old expense bills were worthless for reshipping purposes in connection with tonnage that moved into the plant after complainant had resumed business at the same plant, first as a lessee, and later as a corporation; *Held also*, That complainant is entitled to use for transit purposes inbound expense bills representing grain moved into the plant subsequent to resumption of business under lease, and to reparation on certain shipments in connection with which confusion as to the proper manner of surrender of expense bills was contributed to by both defendant and complainant.

Draper & Rice for complainant.

Charles N. Burch for Illinois Central Railroad Company.

REPORT OF THE COMMISSION.

CLARK, *Commissioner*:

This case involves the milling-in-transit rates at Dyersburg, Tenn. Complainant, in instituting the proceeding, sought reparation in the sum of \$5,354.51, because the principal defendant refused to permit the application of certain inbound-expense bills upon outgoing shipments, such refusal being based upon the ground that to so apply such expense bills would be to permit unlawful substitution of tonnage at that transit point. The result of this refusal was to impose upon certain shipments the proportional rates to Dyersburg plus the local rates out of Dyersburg, instead of the through rates from points of origin to points of ultimate destination. At the hearing complainant reduced its claim for reparation to \$3,679.07, this amount being made up of claim for \$1,553.82 under the expense bills which were on hand at the time of the bankruptcy, and which

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are hereinafter referred to as the old expense bills, and \$2,125.25 on account of shipments made under expense bills originating subsequently to the bankruptcy, which expense bills will be herein referred to as the new expense bills.

Complainant, the Henry A. Klyce Company, is a corporation having its principal place of business and milling plant on the line of the Illinois Central Railroad at Dyersburg, Tenn. Complainant, under a slightly different firm name, had operated the plant for some years. when, on May 7, 1909, involuntary bankruptcy proceedings suspended its work. Prior to that date complainant handled large volumes of grain which came from points of origin in the west and middle west to Dyersburg under proportional, or milling-in-transit, tariff rates. These tariffs provided for the milling, sorting, grading, etc., of such grain at Dyersburg, and for the forwarding of the products to points in Mississippi Valley Territory and in Southeastern Territory under the through rates from points of origin to points of ultimate destination.

Prior to February 22, 1909, the procedure whereby the through rate was applied was substantially as follows: The inbound grain moved under proportional rates to Dyersburg, where, after elevation or milling, it was reshipped to points in the Mississippi Valley at the local rates from Dyersburg. Upon surrender of the inbound expense bills the charges were corrected to equal the through rates from points of origin to points of destination. Where the product was shipped from Dyersburg to points in Southeastern Territory, such as Atlanta, no such correction was necessary, as the rates under which transit at Dyersburg was permitted consisted of the proportional rates from points of origin to Dyersburg plus the local rates from Dyersburg.

As these shipments to Southeastern Territory required no surrender of inbound expense bills, such expense bills accumulated in the hands of complainant and were used to defeat the rates on shipments to the Mississippi Valley. Beginning February 22, 1909, the through milling-in-transit rates to the southeast, as well as to the Mississippi Valley, required the surrender of inbound expense bills, and thus the application of proper rates was better protected than had been the case before that date.

Prior to this change complainant had accumulated inbound expense bills representing several millions of pounds, and as the time limit specified in the tariffs for the use of such expense bills was six months, and as complainant used the oldest and most advantageous expense bill available on any shipment, the surplus of expense bills acquired under the old tariffs was maintained in large part until the bankruptcy proceedings of May 7, 1909.

When the trustee in bankruptcy took charge of the plant he found therein no grain of any kind. There was in the mill about 500,000

pounds of corn shucks, which under the tariffs were not entitled to transit privileges; about 225,000 pounds of corncob meal, and approximately 3,000,000 pounds of unmanufactured cobs. The corncob meal was listed in the trustee's inventory, but the corncobs were not considered of sufficient importance to be listed. It appears also that this pile of cobs had been accumulating since some time in 1908, and therefore a very substantial but wholly indefinite portion of them had been in the plant longer than the six months permitted under the transit rules. These commodities remained in the mill undisturbed by the trustee in bankruptcy and complainant received them from him, together with the old expense bills, on August 18, 1909, when the bankruptcy proceedings were terminated.

From July 28, 1909, Henry A. Klyce as an individual leased the plant until the termination of the bankruptcy. His dealings during that period had no reference to the corn-cob meal or the unmanufactured cobs in the mill. Upon taking possession of the plant on August 18, 1909, complainant, the Henry A. Klyce Company, endeavored to apply the old inbound-expense bills on shipments moving out of the plant subsequent to that date, such shipments being grain or the products of grain that moved in subsequently to the appointment of the trustee, at which time, as has been seen, there was no grain and no grain product in the plant other than the cob meal and the cobs. During the bankruptcy proceedings the Illinois Central Railroad Company had become aware of the fact that there was no grain in the plant. About this time, also, the carriers had had their attention directed to the abuses of transit privileges by various shippers, and the dispute between complainant and the chief defendant in this case as to the application of the old expense bills on shipments moving out from the plant subsequent to August 18, 1909, was referred to this Commission. The matter was not in such shape that any order or finding could be made, and formal complaint was filed.

The testimony in this case was taken April 22, 1910, and the Commission on May 3, 1910, issued its report *In the Matter of the Substitution of Tonnage at Transit Points*, 18 I. C. C. Rep., 280. That report followed exhaustive hearings at various places, including Memphis, Tenn., and the situation at Dyersburg was before the Commission.

The record indicates that of these old expense bills only so many of them as represented the inbound movement of 357,070 pounds were for snap corn or ear corn and in date. Of this weight only 20 per cent would be cobs, or 71,414 pounds. Therefore, under any circumstances only so many of these expense bills could have been used in forwarding any part of the cob meal as represented 71,414 pounds, and even to that extent they could not have been used except for the outgoing movement of commercial feed made not only of cobs but of

the offal of other grains that moved in under transit rates, of which there were none on hand. Complainant argues that in the past defendants have never made the point that mills and elevators that were empty at certain seasons were not entitled to thereafter use expense bills which were in possession of shippers who had no corresponding tonnage on hand. This contention is probably true. As has been seen in previous investigations, general laxity and irregularity prevailed in the matter of transit privileges and cancellation of inbound expense bills, but the fact that that was so in the past affords no warrant for now approving or continuing it. We find no justification for any such use of these old expense bills as is contended for by complainant.

Defendant's tariff governing outbound shipments to Mississippi Valley points contains the following provisions:

Grain reshipped, or the milled or shelled products shipped to destinations shown in section 3, page 16, will be waybilled from the reshipping or milling point at the remainder of the through rate, as provided in Application of Rates, page 7. * * *

Original paid freight bills, showing points of origin and charges to the reshipping or milling point, must be surrendered to the agent of the I. C. R. R. at time of shipment from the reshipping or milling point. * * *

When bills of lading are issued the agent must cancel and retain the original paid freight bill surrendered, indorse thereon the destination, weight, and rate applied on the reshipments. He must also give the paid freight bill's numbers, which must be shown on the bills of lading and waybill, and must also show on waybills the points of origin of the grain.

After the bankruptcy proceedings referred to, one officer of defendant Illinois Central Railroad instructed the agent at Dyersburg that the use of old expense bills would be proper. This erroneous advice was promptly countermanded in writing by proper officer of defendant, and the agent was instructed that the old expense bills had expired for reshipping purposes and that grain reshipped from Dyersburg subsequent to resumption of operations by Mr. Klyce must be handled at Dyersburg proper rates or in accordance with tariffs governing expense bills for grain brought in since complainant resumed operation. It appears that complainant was advised of these instructions. Complainant continued forwarding shipments from Dyersburg and made claim for application of the through rates through claims filed with defendant Illinois Central, accompanied by proper and valid inbound expense bills.

Defendant, calling attention to the fact that tariff requires that these bills shall be surrendered to the agent at Dyersburg, who will thereupon bill the shipments at the remainder of the through rate, and to the fact that this procedure was not strictly followed by complainant, says that as to those claims to which the only objection is that expense bill was filed with freight claim agent instead of with

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the agent at Dyersburg it is willing to make settlement, with the consent and approval of the Commission.

It appears that between May 7 and August 18, 1909, Henry A. Klyce individually carried on some business of selling and reshipping grain at Dyersburg, and that on July 28, 1909, the same Henry A. Klyce, as an individual, leased the plant which at the time of the termination of the bankruptcy on August 18, 1909, passed into his possession in the name of the Henry A. Klyce Company. Defendant argues that the individual and the corporation are two different entities, and that the Henry A. Klyce Company has no right to use the expense bills of Henry A. Klyce the individual. Carried to its logical conclusion, this contention would mean that if a milling plant using transit privileges extended by a carrier, and full of grain and grain products, were to change ownership without stopping the wheels of the mill, or if the firm should change by the retirement or admission of a partner, all of the product then on hand and in transit for that plant would be automatically deprived of the transit privilege, a conclusion which we are not prepared to sustain. If, however, Henry A. Klyce as an individual, between May 7, 1909, when this plant passed out of his possession into the hands of the trustee, and July 28, 1909, upon which date he assumed operation of the plant under lease, acquired inbound-expense bills for shipments which did not pass through and were not handled at this plant, they could not properly be recognized and applied in connection with outbound shipments from the plant subsequent to Mr. Klyce's installation as lessee.

As to the claim under the new expense bills, we are of the opinion that complainant should have reparation on shipments handled through this plant and forwarded subsequent to the date of the lease, July 28, 1909, and as to which valid inbound expense bills of that or subsequent date were surrendered, in the difference between the amounts paid and the through rates from points of origin to points of destination. It is not contended and it does not seem reasonable to believe that defendant's agent at Dyersburg was not fully aware of the fact that these shipments were intended by complainant as reshipments under the transit rates and rules. There was confusion and misunderstanding on both sides as to the use of the expense bills and the manner of securing application of through rates thereunder.

Complainant may present to defendant Illinois Central Railroad Company an itemized list of claims under new expense bills in accordance with these views, which statement said defendant will check, and upon presentation to the Commission of an agreed statement as to the amount of reparation due thereunder, proper order will be entered.

No. 3334.

R. PRAHLOW

v.

INDIANA HARBOR BELT RAILROAD COMPANY ET AL.

Submitted November 11, 1910. Decided December 5, 1910.

1. Inasmuch as the record does not disclose a through rate in excess of the combination of locals, nor a case of misrouting, complainant's contention that the rates exacted were unreasonable is not sustained.
2. Although the Commission adheres to the principle as to weighing announced in *Romona Oolitic Stone Co. v. Vandalla R. R. Co.*, 13 I. C. C. Rep., 115, it is not of opinion that substantial justice requires its application to the switching service here involved. Complaint dismissed.

O. M. Rogers for complainant.

H. T. Ballard for defendants.

REPORT OF THE COMMISSION.

KNAPP, Chairman:

Complainant is an ice dealer engaged in business at Wolf Lake, Lake County, Ind. By complaint filed June 16, 1910, he attacks the reasonableness of certain charges exacted by defendants for the transportation of eight carloads of ice during February, 1910, from Wolf Lake, Ind., to the plant of the Gottfried Brewing Company, in South Chicago, Ill. The complaint assails both the reasonableness of the rates and weights upon which they were assessed.

The shipments in question moved over the Indiana Harbor Belt Railroad from Wolf Lake to Indiana Harbor, Ind., and thence over the Lake Shore & Michigan Southern Railway to South Chicago. The charges assessed were the separately established rates of the defendants for what amounts in substance to a switching service, and were made up in the following manner: Indiana Harbor Belt Railroad Tariff, I. C. C. No. 150, effective June 1, 1909, named a rate on all freight (except stone) from Wolf Lake, Ind., to the Lake Shore & Michigan Southern tracks at Indiana Harbor (when destined to South Chicago) of \$5.25 per car of 60,000 pounds or less, additional weight above 60,000 pounds at 18 cents per ton. Lake Shore & Michigan Southern Tariff, I. C. C. No. A-2362, effective

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December 21, 1908, named a rate on all freight, in carloads, from the Indiana Harbor Belt Railroad at Indiana Harbor to the plant of the Gottfried Brewing Company and certain other industries in South Chicago of \$6 per car, 30,000 pounds maximum, excess weight in proportion, or 2 cents per 100 pounds. The tariffs of both roads provide that the rates shall be based upon the marked capacity of the cars when weights are not furnished by shippers. Of the eight cars shipped by complainant, one had 50,000 pounds capacity. Upon it the Indiana Harbor Belt Railroad assessed \$5.25 per car and the Lake Shore \$10, or a total of \$15.25 for the movement. Four of the cars were of 60,000 pounds capacity, resulting in total charges of \$17.25 per car. The remaining three cars were of 80,000 pounds capacity, and upon them a total charge of \$22.25 per car was assessed.

Complainant's claim for reparation, so far as the rates are concerned, is based upon the allegation that a lower combination was in force over defendants' lines via Whiting, Ind. The facts in respect thereto are as follows: Indiana Harbor Belt Tariff, I. C. C. No. 150, above mentioned, named a rate from Wolf Lake, Ind., to industries and team tracks on the Indiana Harbor Belt Railroad at Whiting, Ind., of \$5.50 per car of 60,000 pounds, excess weight in proportion. Lake Shore & Michigan Southern Tariff, I. C. C. No. A-2362, named a rate from Whiting to South Chicago of \$6 per car of 60,000 pounds, excess weight in proportion. By reference to the rates above mentioned complainant asserts that the combination on Whiting was \$11.50 per car and asks reparation upon that basis. It appears from the record, however, that no combination upon Whiting was possible. The Indiana Harbor Belt rate to Whiting was a purely local rate, restricted to industries and team tracks on its own line at Whiting, and this road does not interchange traffic with the Lake Shore at that point. For convenience in operation the defendants have arranged for interchange of traffic at Indiana Harbor only, and the rates in question were not applicable via Whiting. By its tariff, I. C. C. No. A-2658, effective November 15, 1910, the Lake Shore has increased its rate from Whiting to South Chicago to \$6 per car of 30,000 pounds or less, excess weight in proportion (amounting to 2 cents per 100 pounds); so that at present, even if the combination via Whiting were available, it would be the same as the Indiana Harbor combination.

No evidence was introduced relating to the reasonableness of the Indiana Harbor combination except the alleged combination on Whiting, which, as has been noted, was not available for a through shipment. For the reasons stated, the record does not disclose a through rate in excess of the combination of locals, nor does it present a case of misrouting, inasmuch as the cars were forwarded via

the only available junction point. Therefore we can not sustain complainant's contention that the rates exacted were unreasonable.

Complainant also asserts that the assessment of rates upon the marked capacity of the three 80,000-pound cars was unreasonable, because it was impossible to load into the cars an amount of ice approaching in weight the marked capacity. Upon this point the record is so unsatisfactory that no finding can be made. Complainant testified that he loaded three tiers of ice in each car, but admitted upon cross-examination that it would have been physically possible to load five tiers of ice. Complainant did not know the actual weight of the ice in any of the cars, but he argues in his brief that it would not be practical to load ice five tiers high, because if that were done the lading would exceed the capacity of the car. Defendants do not weigh cars upon which a flat switching rate applies, for the reason that the labor involved in switching cars to and from scales would add appreciably to the cost of the movement. In *Romona Oolitic Stone Co. v. Vandalia R. R. Co.*, 13 I. C. C. Rep., 115, the Commission condemned a practice by which shipments of stone from nonscale points were billed at weights equal to the marked capacity of the cars. The weights in that case were applied to a line haul and the practice resulted in frequent overcharges. Although we adhere to the principle announced in that decision, we are not of opinion that substantial justice requires its application to the switching service which is the subject of this controversy. An order will be entered dismissing the complaint.

19 I. C. C. Rep.

No. 3302.

DUMEE, SON & COMPANY

v.

ALABAMA, TENNESSEE & NORTHERN RAILROAD COMPANY ET AL.

Submitted October 3, 1910. Decided December 5, 1910.

Defendants' rates on compressed cotton linters in carloads, released to a valuation of 2 cents per pound, from Aliceville, Ala., to Philadelphia, Pa., found unreasonable, and reparation awarded.

Edward J. DuMee for complainants.

R. Walton Moore for Southern Railway Company and Mobile & Ohio Railroad Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complainants are cotton merchants, having their principal place of business in Philadelphia, Pa. The petition herein was filed on May 26, 1910, and puts in issue the reasonableness of the rate exacted by the defendants for the movement of three carloads of compressed cotton linters, released to a valuation of 2 cents per pound, from Aliceville, Ala., to Philadelphia, Pa., on July 23 and 26, 1909. The shipments in question aggregated 37,500 pounds in weight, and moved via the line of the Alabama, Tennessee & Northern Railroad Company from Aliceville, Ala., to Reform, Ala., thence via the line of the Mobile & Ohio Railroad Company to Columbus, Miss., and thence via the Southern Railway and the Philadelphia, Baltimore & Washington Railroad to Philadelphia. In the absence of a joint through rate on cotton linters from point of origin to destination, charges were assessed at the rate of 90 cents per 100 pounds, made up of the combination upon Columbus, Miss., the total amount collected being \$339.50. The rate applied is alleged to be excessive and discriminatory and out of harmony with the rates from points in contiguous and more distant territory. Reparation is asked.

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There can be no question that the rates on cotton linters applying from various points in Alabama, Mississippi, Louisiana, and even Texas, to Philadelphia, are lower than the rate subjected to attack in this proceeding. For example, Mobile, Ala., enjoys a rate of 42 cents per 100 pounds; Meridian, Miss., a rate of 61 cents per 100 pounds; Laurel, Miss., 63 cents per 100 pounds; Newton, Miss., 63 cents per 100 pounds; Macon, Miss., 60 cents per 100 pounds; Bastrop, La., 73 cents per 100 pounds; Hearne, Tex., 82½ cents per 100 pounds; Dallas, Tex., 88 cents per 100 pounds. It appears, however, that the originating carrier, the Alabama, Tennessee & Northern Railroad Company, is a newly constructed line with a comparatively meager traffic, while the points to which reference is made are served directly by extensive railroad systems. Under the circumstances we do not feel justified in requiring the Alabama, Tennessee & Northern Railroad Company to join in the establishment of rates as low as those applying from points located on the rails of carriers more firmly established. The complainants' representative stated at the hearing that the company would be satisfied with the establishment of a rate of 82 cents per 100 pounds and an award of reparation upon that basis. The defendants have indicated their willingness to join in this adjustment.

We find accordingly that the rate of 90 cents per 100 pounds assessed and collected for the movement of the shipments giving rise to the complaint is unjust and unreasonable to the extent that it exceeds 82 cents per 100 pounds, and that the rate for the future should not exceed that figure. Reparation will be awarded in the amount of \$30, with interest from July 30, 1909. It will be ordered accordingly.

19 I. C. C. Rep.

No. 2855.

J. H. DAY COMPANY

v.

BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.

Submitted September 30, 1910. Decided December 5, 1910.

Reparation awarded on complainant's shipments of iron drying racks from Brighton, Ohio, to St. Louis, Mo., on account of improper classification.

G. M. Stephen for complainant.

Robert S. Alcorn for Baltimore & Ohio Southwestern Railroad Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant corporation is engaged at Cincinnati, Ohio, in the manufacture of various classes of articles, and in a complaint filed September 11, 1909, claims reparation on three shipments of iron drying racks from Brighton, Ohio, to St. Louis, Mo., on August 9, 19, and 24, 1907, respectively. The claim first was informally presented to the Commission on July 26, 1909. These racks, which are about 7½ feet long, 3½ feet wide, and 5½ feet high, consist merely of a framework divided in the middle by a vertical skeleton partition into two compartments, into each of which, resting upon narrow ledges, may be placed a number of shallow pans for use in drying or otherwise treating articles. The first two shipments consisted of 12 racks each, weighing in the aggregate 15,600 pounds; the third, of 7 racks, weighing 4,550 pounds.

One item in the Official Classification (No. 30, Item 16) in effect at the time these shipments moved, rates "drying racks" double first class in less than carloads, no provision being made for carload shipments. The first class rate from Brighton to St. Louis was 41 cents per 100 pounds, necessitating the payment of 82 cents per 100 pounds upon these shipments. Another item (No. 22) of the same classification rates "racks, n. o. s.," double first class in less than carloads, but carload shipments, minimum weight 10,000 pounds, are rated second class, which made a rate of 35 cents per 100 pounds from

Brighton to St. Louis. Complainant's contention is that the rate should not have exceeded that on "racks, n. o. s.," in carloads.

It is explained by the complainant that the use for which racks were intended determined in large measure the rating under this classification, and that as these particular racks were to be used in drying macaroni it was believed to be necessary to ship them as "drying racks." Otherwise they might have been shipped as "racks, n. o. s." But whatever question might then have arisen on that subject, the classification in effect since January 1, 1910, has contained no provision whatever for "drying racks," the rating now applicable on racks of all descriptions being that for "racks, n. o. s." The second class rate from Brighton to St. Louis is now 34½ cents. The Western Classification in effect since April 1, 1907, also prescribes the second class rate on "drying racks" in carloads, minimum 10,000 pounds.

It is our conclusion that complainant was entitled to the second class rate on these shipments, subject to a minimum of 10,000 pounds, and that reparation should be awarded in the sum of \$60.23, as claimed. The complainant at the hearing having abandoned its request for a future rating, and it appearing that since January 1, 1910, the second class rate has been effective on this class of goods, it is not deemed necessary to make an order in respect thereto.

An order will be entered for reparation in the sum of \$60.23, with interest from September 1, 1907.

19 I. C. C. Rep.

No. 3152.
GEORGE N. PIERCE COMPANY
 v.
**NEW YORK CENTRAL & HUDSON RIVER RAILROAD
 COMPANY.**

Submitted October 24, 1910. Decided December 5, 1910.

1. The charges collected by defendant for the transfer of five cars of less-than-carload freight, originating without the state of New York, from the Black Rock freight station in Buffalo, N. Y., to the private siding of complainant in said city, found unlawful and unduly discriminatory by reason of the fact that similar service was accorded by defendant without charge to other consignees whose traffic was handled under similar conditions. Reparation awarded.
2. The practice of naming specific consignors and consignees as entitled to certain service is objectionable not only on account of form but because it may often effect, as in the present instance, an actual discrimination between persons similarly situated and equally entitled to the carrier's service.

Almon W. Lytle for complainant.

O. E. Butterfield for defendant.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant is a corporation engaged in the manufacture and sale of motor vehicles, having its principal place of business in the city of Buffalo, N. Y. By its petition, filed on March 4, 1910, reparation is sought in the amount of the charges paid for the transfer of 57 carloads of freight from the Black Rock freight station of the defendant in Buffalo, N. Y., to the private siding reaching the complainant's plant. The cars in question contained less-than-carload freight originating at various points both within and without the state of New York, and charges were collected for the transfer service at the rate of \$3.50 per car. These charges are alleged to be unlawful by reason of the fact that the defendant had in effect contemporaneously a tariff providing for free "ferry car service" (as the transfer of less-than-carload freight between the defendant's freight

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station and industrial sidings is styled) to various specified industries. The pertinent provisions of the tariff in question read as follows:

FERRY CAR SERVICE.

Cars containing freight which has been received at or is to be forwarded from stations named herein via the lines of this company, subject to freight charges, will be moved to or from our station freight houses from or to industries named herein having direct track connection with rails of this company within station limits under the following conditions:

1. Cars must contain only such freight as may under current rules be accepted for transportation.

2. This arrangement will not apply to freight in switching movement to or from a connecting carrier nor from one siding to another siding within the jurisdiction of one agency.

WITHOUT CHARGE.

When cars contain 5,000 pounds or more or when cars are loaded to their full cubic capacity, free of charge.

As the tariff indicates, it is the practice of the defendant, when the requisite amount of less-than-carload freight has accumulated at the freight station, to place it in a so-called "ferry car" and switch it to the siding of the consignee. The complainant's name was not included in the list of industries carried in the tariff by reason of the fact that a private sidetrack had not been constructed into the plant at the time the tariff was issued. On March 4, 1907, the private siding was installed and, by amendment to the tariff, effective September 14, 1907, the complainant's plant was added to the industries enjoying the ferry car service. During the interim the cars giving rise to the complaint were transferred and charges collected as above set forth.

This claim was originally presented to the Commission on March 13, 1909, and is, therefore, not barred by the statute of limitations.

The cars covered by the petition contained not only freight originating at points outside of the state of New York and on the line of the New York Central Railroad Company, but freight coming from points within the state of New York, as well as over the lines of other carriers than the New York Central Railroad Company. Only five of the cars contained solely interstate freight originating on the line of the New York Central Railroad Company, and it is self-evident that the jurisdiction of the Commission does not extend beyond these particular transactions. If the Commission were to require a refund of the charges collected in any other instance, the award would necessarily cover the movement of freight not subject to the act to regulate commerce.

We may observe that the Commission does not approve of tariffs constructed upon the plan of the defendant's "Ferry Car Service"

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tariff under consideration in this proceeding. The practice of naming specific consignors and consignees as entitled to a certain service is objectionable not alone on account of form but because it may often effect, as in the present instance, an actual discrimination as between persons similarly situated and equally entitled to the carrier's service. This complaint would never have arisen if the defendant's tariff had provided that the ferry car service would be effective within a certain defined area.

We find that the charges collected by the defendant for the transfer of five cars of less-than-carload freight, originating on the line of the New York Central Railroad Company without the state of New York, from the Black Rock freight station in the city of Buffalo to the private siding of the complainant, between May 10 and July 17, 1907, inclusive, were unlawful and discriminatory by reason of the fact that similar service was accorded by the defendant without charge to other consignees whose traffic was handled under similar conditions. Reparation will be awarded in the amount of \$17.50, with interest from July 17, 1909.

It will be ordered accordingly.

19 L. C. C. Rep.

Nos. 3140 and 3141.
PABST BREWING COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

No. 3246.
JOS. SCHLITZ BREWING COMPANY
v.
SAME.

Submitted October 17, 1910. Decided December 5, 1910.

Following *Liebold Co. v. D., L. & W. R. R. Co.*, 17 I. C. C. Rep., 503, complainants' claims for reparation on various shipments of beer from Milwaukee, Wis., to points on the Pacific coast and in Colorado, Wyoming, western Nebraska, and New Mexico are denied. Complaints dismissed.

Charles Zielke for Pabst Brewing Company.

O. J. Bertschy for Jos. Schlitz Brewing Company.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

Hale Holden for Chicago, Burlington & Quincy Railroad Company.

S. A. Lynde for Chicago & North Western Railway Company.

James C. Jeffery for Denver & Rio Grande Railroad Company and Missouri Pacific Railway Company.

W. F. Dickinson and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LANE, *Commissioner*:

The complainants are corporations engaged in the manufacture and sale of beer and malt products, having their principal places of business in the city of Milwaukee, Wis. By petitions filed on March April 22, 1910, and amendments subsequently presented, the complainants contest the reasonableness of the rates charged by the carriers for the movement of various carload shipments of beer

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in order to enable the complainants to meet this local market competition with success. This circumstance tends to rebut any presumption of unreasonableness which may arise from the history of the rates; it argues strongly in favor of the carriers' contention that the lower standard was reestablished because of competitive conditions and not because of a conviction that the increased rates were excessive.

These cases seem to be controlled by the decision of the Commission in the case of *Liebold Co. v. D., L. & W. R. R. Co.*, 17 I. C. C. Rep., 503. In that proceeding the Commission was unable to find that a rate of \$1.10 per 100 pounds for the transportation of beer from the Mississippi River and points east thereof to San Francisco, Cal., under a 30,000-pound minimum was unjust and unreasonable, and declined to allow reparation on account of shipments made while that rate was in effect. This decision directly controls the issue with respect to the shipments moving from Milwaukee to Pacific coast points, and, by necessary implication, disposes of the complaints covering the shipments to Colorado, Wyoming, western Nebraska, and New Mexico points as well. We can not find that the rates of which complaint is made are unreasonable. An order of dismissal will therefore be entered.

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No. 3284.

CLEARY BROTHERS COMPANY

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.

Submitted October 10, 1910. Decided December 5, 1910.

Rates on beer and other beverages from Milwaukee, Wis., to Gladstone and Escanaba Mich., found unreasonable, and reparation awarded.

G. M. Stephen for complainant.

S. A. Lynde for Chicago & North Western Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant is a Michigan corporation engaged in the purchase and sale of liquors and kindred commodities, having its principal place of business in Escanaba, Mich. By its petition filed on May 13, 1910, it challenges the reasonableness of the rates exacted by the defendants for the movement of 53 carloads of beer and other beverages from Milwaukee, Wis., to Escanaba and Gladstone, Mich., on various dates ranging from January 5, 1909, to January 4, 1910, inclusive. Of the foregoing shipments 21 carloads, aggregating 650,365 pounds in weight, moved from Milwaukee to Escanaba, via the line of the Chicago & North Western Railway Company, charges being collected at the rate of 22 cents per 100 pounds, or in the total amount of \$1,427.32. The remaining shipments, or 32 carloads, aggregating 973,260 pounds in weight, moved from Milwaukee to Gladstone, via the lines of the Chicago, Milwaukee & St. Paul Railway Company and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company, charges being collected at the rate of 22 cents per 100 pounds, or in the total amount of \$2,092.56. The 22-cent rate as assessed is alleged to be unjust and unreasonable to the extent that it exceeds a rate of 19 cents per 100 pounds based upon a minimum weight of 30,000 pounds, and reparation is asked upon that basis.

The defendants deny that the rate of which complaint is made is excessive and resist the demand for reparation.

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It appears that at the time the shipments in question moved, there was in effect a rate of 19 cents per 100 pounds on beer in carloads from such points as Springfield, Kankakee, and Peoria, Ill., and Fort Madison, Dubuque, and Clinton, Iowa, to Escanaba, and this rate extended to such northerly points as Ashland, Wis., and Duluth, Minn. A glance at the map will make it clear that much of the traffic originating in this territory must pass through Milwaukee en route to Escanaba while the length of haul is materially greater than the distance from Milwaukee to either Escanaba or Gladstone.

On August 20, 1909, the 19-cent rate was made effective from Milwaukee to Escanaba and Gladstone. More recently an effort has been made to advance the Escanaba rate to 21 cents per 100 pounds, but the tariff carrying the increase has been suspended by order of the Commission.

The Chicago & North Western Railway Company does not now resist the demand for reparation upon the shipments in which it is interested but opposes an order requiring the future maintenance of the 19-cent rate. No appearance was entered either for the Chicago, Milwaukee & St. Paul Railway Company or the Minneapolis, St. Paul & Sault Ste. Marie Railway Company at the hearing, but the general counsel of the latter carrier, by letter filed at the hearing, consented to submit the case for decision upon the pleadings.

We find that the 22-cent rate assessed and collected by the defendant Chicago & North Western Railway Company for the movement of beer and other beverages in carloads from Milwaukee, Wis., to Escanaba, Mich., was unjust and unreasonable to the extent that it exceeded 19 cents per 100 pounds, and that the complainant is entitled to reparation in the amount of \$191.63, with interest from August 24, 1909. We find further that the rate assessed and collected by the defendants, the Chicago, Milwaukee & St. Paul Railway Company and the Minneapolis, St. Paul & Sault Ste. Marie Railway Company for the movement of beer and other beverages in carloads from Milwaukee to Gladstone, Mich., was unjust and unreasonable to the extent that it exceeded 19 cents per 100 pounds, and that the complainant is entitled to reparation in the amount of \$243.37, with interest from January 4, 1910.

The establishment of proper rates for the future will be reserved for further consideration.

It will be ordered accordingly.

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No. 3216.
FRED MILLER BREWING COMPANY
v.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY
ET AL.

Submitted October 17, 1910. Decided December 5, 1910.

A 20,000-pound minimum is excessive as applied to consignments of empty beer kegs in refrigerator cars, but is not excessive with respect to empty kegs and bottles, mixed, or to straight shipments of empty bottles. Reparation awarded on complainant's shipments of empty beer kegs.

Charles E. Canright for complainant.

F. G. Wright for Chicago, Milwaukee & St. Paul Railway Company.

James C. Jeffery for Texas & Pacific Railway Company; Little Rock, Hot Springs & Western Railroad Company; and St. Louis, Iron Mountain & Southern Railway Company.

W. F. Dickinson and *A. B. Enoch* for Chicago, Rock Island & Pacific Railway Company.

D. L. Meyers for Atchison, Topeka & Santa Fe Railway Company and Gulf, Colorado & Santa Fe Railway Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The complainant is a corporation, engaged in the manufacture and sale of beer and malt products, having its principal place of business in the city of Milwaukee, Wis. The petition herein was filed on April 6, 1910, and asks reparation for the collection of alleged unreasonable charges for the movement of various shipments of empty beer packages in refrigerator cars from points in Texas, Louisiana, and Arkansas to Milwaukee, between May 25, 1908, and January 26, 1909, inclusive. In each instance charges were collected in accordance with the lawfully established rate in conjunction with the carload minimum weight of 20,000 pounds. No complaint is made against the rates charged, but the carload minimum is alleged to be unjust and unreasonable to the extent that it exceeds a minimum of 15,000 pounds, as subsequently established.

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The testimony taken at the hearing seems to establish the fact that it is impossible to load refrigerator cars with empty beer kegs, or kegs and bottles mixed, to the 20,000-pound minimum effective at the time the shipments in question moved. The complainant's witness testified, however, that it is practicable to load empty bottles to the full 20,000-pound minimum, and stated that no objection could be made to the Commission's sanctioning that minimum as applied to shipments of this character. The complainant was thereupon requested to file a supplementary statement with the Commission, setting forth separately the shipments consisting of straight carloads of empty bottles and shipments comprising kegs, or kegs and bottles mixed. This statement has not been furnished, but a letter has been received stating that the complainant desires to recede from the position taken at the hearing and claims reparation upon all the shipments set forth in its petition.

We think we may fairly find from the record that a 20,000-pound minimum is excessive as applied to consignments of empty beer kegs in refrigerator cars, but we can not in justice reach the same conclusion with respect to empty kegs and bottles, mixed, or to straight shipments of empty bottles. In our judgment the complainant is entitled to reparation only in the case of shipments of the former character. The Commission suggests that a statement setting forth in detail the shipments which consisted of empty beer kegs, together with the charges collected and the reparation properly to be awarded under these findings, be prepared by the complainant and submitted to the defendants for verification. When the Commission is in receipt of such a statement, properly checked, an order awarding reparation will be issued.

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No. 2386.

ANACONDA COPPER MINING COMPANY

v.

CHICAGO & ERIE RAILROAD COMPANY ET AL., AND 8 OTHER CASES DISPOSED OF IN THE ORDER ENTERED HEREIN, WHEREIN THE PARTIES ARE NAMED, WHICH CASES ARE INDICATED BY DOCKET NUMBERS AS FOLLOWS: 2207, 2208, 2209, 2210, 2211, 2383, 2384, AND 2385.

Submitted December 8, 1909. Decided December 12, 1910.

Complainants, who smelt copper at Anaconda and Black Eagle, Mont., shipped coke on the separately established or joint through rates from the West Virginia-Pennsylvania ovens to Chicago, plus the rates beyond to the smelters. At the time covered by these complaints the defendants maintained two rates upon coke from the ovens to Chicago, a rate of \$2.65 per net ton on coke and a rate of \$2.35 per net ton "on coke for use in blast furnaces for smelting iron from the ores." There were no joint through rates in effect from the ovens to Montana. No complaint was made of the rates from Chicago to Montana, but complainants asked reparation upon the ground that the maintenance of the two separate rates upon the same commodity at the same time from the ovens to Chicago was a discrimination that was undue and that the higher rate was unjust and unreasonable. Reparation was demanded in the amount of the difference between the two rates. Complainants also asked that the Commission find "that the charging to complainants the excessive and illegal or unreasonable rates on coke for five years next preceding the filing of this petition be declared unjust, unreasonable, and illegal;" *Held:*

1. That following the spirit, as well as the letter, of the limitation clause contained in section 16 of the act, the Commission believes it is without jurisdiction over shipments or the rates and charges assessed thereon for a period exceeding that named in the statute.
2. That the rate of \$2.65 per net ton applying on coke was and is a low rate for the services performed and that the maintenance of a lower rate "on coke for use in blast furnaces for smelting iron from the ores" while improper did not subject the complainants to undue discrimination and is not the basis for awards of damage in these cases.
3. That smelters of copper and of iron do not compete in any proper or ordinary sense of the term and complainants have suffered no damage.

William A. Glasgow, jr., and Charles D. Drayton for complainants.
William Ainsworth Parker for Baltimore & Ohio Railroad Company.

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C. B. Fernald for Pennsylvania Company.

George Stuart Patterson for Pennsylvania Railroad Company and Monongahela Railroad Company.

Clyde Brown and *O. E. Butterfield* for New York Central Lines.

R. Walton Moore for Norfolk & Western Railway Company.

Buckner Clay for Coal & Coke Railway Company.

REPORT OF THE COMMISSION.

COCKRELL, Commissioner:

These cases, by stipulation, were heard together, and disposition will be made of them in one report. The complainant corporations are affiliated as subsidiary companies of the Amalgamated Copper Company. The Anaconda Copper Mining Company has its smelter at Anaconda, and the Boston & Montana Consolidated Copper and Silver Mining Company has its smelter at Black Eagle, in the state of Montana. Five of the complaints of the Anaconda Company were filed March 11, 1909. The complaint in Docket No. 2386 and the three complaints of the Boston & Montana Company were filed April 21, 1909. The subject-matter and phraseology of all the complaints are alike, and set forth the following facts:

(a) That the complainants, in the state of Montana, are engaged in smelting ores containing copper, silver, gold, and iron.

(b) That the defendant carriers have tariffs in accordance with which they charge from the ovens in West Virginia and Pennsylvania to Chicago, and certain Chicago points, a rate of \$2.35 per net ton on coke when used for smelting iron from the ores.

(c) That defendant carriers under other tariffs charge for the transportation of coke between the points named, when used for other purposes than the smelting of iron from the ores, a rate of \$2.65 per net ton.

The complaints allege that "it is illegal, unlawful, and contrary to the act to regulate commerce for said defendants to charge a different or greater rate for the transportation of coke as aforesaid, basing said charge on the purposes for which said coke is used;" that complainants have shipped large amounts of coke from the ovens in West Virginia and Pennsylvania to Chicago, or to Chicago-rate junctions, upon which the defendants have exacted the rate of \$2.65 per net ton; that such rate on coke for other uses than the smelting of iron from the ores was and is unjust and unreasonable, and was and is discriminatory against the complainants, and subjected the complainants to excessive charges of 30 cents per net ton on all the coke transported for them; and that this Commission should require that the defendants transport all coke, without regard to the uses to which it may be put, for a charge of \$2.35 per net ton. Each complaint is accompanied by exhibits setting forth in detail the weights and charges

applied to specific shipments, as well as the amount claimed as reparation for the alleged overcharges.

The prayers of these complainants ask not only reparation, but for the establishment of a rate for the future, and certain of them request that this Commission find "that the charging to complainant the excessive and illegal or unreasonable rates on coke aforesaid for *five years* next preceding the filing of this petition be declared unjust, unreasonable, and illegal," and that the complainant may have other and further relief.

The defendants admit that they have had and still have two separate tariff schedules prescribing two rates on coke from the ovens to Chicago: One, applying on foundry and other than furnace coke, \$2.65 per net ton, and the other "applying only on coke for use in blast furnaces for smelting iron from the ores," \$2.35 per net ton. They claim that such rates are just and reasonable, have been duly published and filed, and are legal. They deny that such rates, or either of them, discriminate against complainants or that complainants are entitled to any reparation.

The shipments embraced in these cases moved between December 8, 1906, and January 11, 1909. The earliest payments of freight charges appear to have been made in February, 1907. Several of the complaints embrace shipments therefore which are clearly barred by limitation. In this report only such shipments will be considered as moved within two years from the time the complaint embracing them was filed, and with respect to shipments moving prior to such two-year period we think it proper to state that, following the spirit as well as the letter of the limitation clause contained in section 16 of the act, we believe we are without jurisdiction, and therefore we will not make any finding whatever concerning such shipments or the rates and charges assessed thereon, neither will we make any finding or express any opinion concerning the rates on coke "for five years next preceding the filing" of these petitions.

The rates assessed upon all the shipments herein considered were the separately established or joint through rates from the West Virginia-Pennsylvania ovens to Chicago plus the rates beyond to Anaconda or Black Eagle in Montana. At no time covered by these complaints was there a joint through rate on coke by way of Chicago from the West Virginia-Pennsylvania ovens to either of these destinations. The testimony indicates that while some shipments were made from the ovens to Montana direct, most of the coke moved from the ovens to Chicago, where it was reconsigned to the complainants. In either case, however, the method of assessing the freight charges and of paying the same was identical—that is, the coke rate from the ovens to Chicago was carried forward and paid at destination as advanced charges.

The testimony shows that the commodity to which the two rates are applied is one and the same thing—coke. Nothing was shown to distinguish between the kind of coke used by blast furnaces for smelting iron from the ores and the kind of coke used by smelters or iron foundries further than to show the difference in the equipment used and the weights of carloads. No practical difference was shown to exist between 48-hour coke and 72-hour coke. While 72-hour coke is ordinarily considered a higher grade than that which has been burned 48 hours, because it contains less sulphur, and therefore for some metallurgical purposes may be more desirable and hence bring a higher price, the testimony shows that both grades are used in blast furnaces for smelting iron from the ores and are also used in the copper smelters.

The coke moving from the West Virginia-Pennsylvania coking ovens to Chicago over the Pennsylvania lines amounts to about 2,225,000 tons per annum, of which only 150,000 tons are destined beyond Chicago and the balance is consumed at that place. The proportions for Chicago and for beyond seem not materially to vary on the lines of the other defendants, though the total amounts carried do differ. Almost all the coke consumed in Chicago is transported in hopper cars of large capacity and is for use in blast furnaces for smelting iron from the ores. These hopper cars are furnished in part by the carriers and in part are owned by the industries using the coke. This special equipment, used for moving coke from the ovens to the blast furnaces, is not permitted by the carriers to go beyond Chicago, for the reason that experience has shown that the western connections find employment for such cars in their local traffic and great delay occurs before they are returned. Coke destined beyond the Chicago gateway is ordinarily loaded in box or stock cars belonging to the western roads, and thus furnishes them return loading and protects the special coke equipment of the initial carriers from prolonged detention by their western connections. The testimony shows that while the blast-furnace coke loaded in hopper cars does not go beyond Chicago, the foundry coke loaded in box cars is sometimes used by the blast furnaces at or near Chicago, and when so used the rate is corrected from \$2.65 per net ton to \$2.35 per net ton. The minimum weight prescribed in each of the said tariffs is 30,000 pounds.

The defendants claim and strongly urge in their briefs and arguments that the traffic in coke for use in blast furnaces for smelting iron from its ores is not the same traffic as the foundry-coke traffic and that the same does not move under substantially similar circumstances and conditions. They cite in support of these contentions the *Party Rate cases*, the *Import Rate case*, and many other decisions of the courts which distinguish between the kinds of traffic and the

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circumstances and conditions under which similar articles moving between the same points may take different rates. They set forth the various traffic and commercial conditions which induced them to establish the two rates from the ovens to Chicago and defend those rates as the outgrowth of circumstances rather than as arbitrary actions of their own. Stress was laid upon the coke for the blast furnaces moving in train loads, while the other coke ordinarily moves in carload lots only, and that a larger tonnage was carried in most of the cars used in transporting coke to the blast furnaces in Chicago. The defendants also urge that unless very low rates are given the blast furnaces at Chicago they can not compete with southern blast furnaces which are close to other coking ovens; and that if a very low rate on coke was not made from the West Virginia-Pennsylvania coking ovens to Chicago they might lose the traffic, because for seven months in the year it is possible to move bituminous coal from the mines in West Virginia and Pennsylvania to Buffalo or Erie and thence by the Lakes to Chicago and convert the same into coke in by-product ovens at the plants.

Whatever difference there may be in the cost to the carrier between traffic in train loads and traffic in carloads, it appears from the general course of legislation with respect to commerce between the states, from the debates and reports of the various committees in Congress when the act to regulate interstate commerce was under consideration, from the better considered court opinions, and from the reports and opinions of this Commission, that to give greater consideration to train-load traffic than to carload traffic would create preference in favor of large shippers and be to the prejudice of small shippers and the public.

This Commission has always held that it is improper for the carriers to base their charges upon the use to which a commodity may be put, and while the statements and arguments presented by the defendants are persuasive, they do not convince the Commission that our position heretofore taken in this regard should be changed.

The question remains to be determined whether the complainants are entitled to reparation, regardless of whether the \$2.65 rate was or is unjust or unreasonable in and of itself. The complainants contend that it is illegal, unlawful, and contrary to the act for said defendants to charge a different or greater rate for transporting coke based upon its use, and that the \$2.65 rate was unjust, unreasonable, and discriminatory. They offered no evidence whatever to show or prove that the \$2.65 rate was in and of itself unjust, unreasonable, or discriminatory, save what appeared on the face of the tariffs, and left the unjustness, the unreasonableness, and discrimination to be deduced or inferred as a matter of law. The freight traffic managers of the defend-

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ants testified that the \$2.35 rate was a very low rate and that the \$2.65 rate was a just and reasonable rate for the service performed and was not in any manner excessive. The average distance from the ovens to Chicago by the lines of the defendants is about 575 miles, and the \$2.65 rate yields an average revenue of 4.6 mills per ton per mile.

Since July, 1903, the open rate on coke over all lines from the ovens in Pennsylvania and West Virginia to Chicago has been \$2.65 per net ton. This rate has been and is the basing rate from said points of origin to Chicago, and for all territory both east and west thereof, and has been paid by all consumers of foundry and other than furnace coke continuously during the past seven years, and no complaint has ever been made against it until these proceedings were instituted for reparation. The lower rate of \$2.35 per net ton for use in blast furnaces for smelting iron from the ores was a tariff reduction, effective not earlier than July, 1905, and has been applied only to Chicago and vicinity, and is a very low rate for the service performed, and in and of itself is not deemed conclusive evidence of the unjustness or unreasonableness of the \$2.65 rate.

Copper and iron can not fairly be said to compete with each other in view of the fact that iron sells for less than \$20 per ton and copper for anything between \$200 and \$500 per ton. There is no pretense in this case that the complainants were engaged in smelting iron from its ores. The allegation in some of the petitions that the complainants are engaged in smelting ores containing copper, silver, gold, and iron does not place them under the terms of the tariffs providing for the rate on blast-furnace coke, and no effort was made on the part of the complainants to show that they ever actually smelted iron from its ores.

In view of all the facts and circumstances in these cases we are not convinced that the rate of \$2.65 per net ton charged the complainants was either unjust or unreasonable for the services rendered by the defendants.

The complaints will be dismissed.

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No. 2768.

BREESE-TRENTON MINING COMPANY ET AL.

v.

WABASH RAILROAD COMPANY ET AL.

Submitted November 2, 1910. Decided December 12, 1910.

1. A carrier may for competitive reasons establish a rate lower than it could justly be compelled by the Commission to establish, and when it has done so the maintenance of such rate under former and different conditions (not altered by any illegal act of its own) than those existing when the rate is later advanced has not the same weight and force as proof in the nature of an admission of the reasonableness of the former rate as ordinarily attaches to the long continuance of a rate voluntarily established and maintained under other conditions.
2. Defendants' rate on bituminous coal from East St. Louis, Ill., to Omaha and South Omaha, Nebr., not found to be unreasonable. Complaint dismissed.

William E. Wheeler for complainants.

E. J. McVann for Commercial Club of Omaha, intervener.

N. S. Brown and *H. E. Watts* for Wabash Railroad Company.

B. M. Flippin, *James C. Jeffery*, and *M. L. Clardy* for Missouri Pacific Railway Company.

O. M. Spencer and *George H. Crosby* for Chicago, Burlington & Quincy Railroad Company.

REPORT OF THE COMMISSION.

CLEMENTS, Commissioner:

This complaint questions the reasonableness of defendants' carload rate of \$2 per ton from East St. Louis, Ill., to Omaha and South Omaha, Nebr., on soft coal originating in Illinois, and seeks the restoration of the former rate of \$1.80, which it is alleged was, prior to April 25, 1909, in effect for a number of years via one or more of defendants' lines.

While the former rate was carried in defendants' tariffs in different ways—sometimes as a local—it was in effect a proportional rate, established to apply on coal originating beyond East St. Louis, no coal being produced at that point. At the present time the \$1.80 rate is effective only on coal originating east of the Ohio-Indiana state line.

The Commercial Club of Omaha intervened in behalf of the complainants.

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There are a number of mines in southern Illinois from which coal moves into East St. Louis upon either local or proportional rates, which are fixed with reference to a division of such mines into two groups, referred to in the record as the inner and outer groups. It is not clear what causes brought about this grouping, whether quality of the coal or distance, but it appears that the mines in the inner group are for the most part located within a radius of 50 miles from East St. Louis, and those in the outer group are farther distant therefrom.

The mines of complainants are in the inner group. Those of the Breese-Trenton Mining Company are located in St. Clair and Clinton counties, Ill., on the Baltimore & Ohio Southwestern, their mine most affected by the rate complained of being at Trenton, a distance of about 25 miles from East St. Louis. The other complainant, the Lumaghi Coal Company, has two mines near Collinsville, Ill., on the Vandalia, about 10 or 12 miles from East St. Louis.

The mines in the inner group are reached by a number of roads, including the Baltimore & Ohio Southwestern; Vandalia; Southern; Illinois Central; Mobile & Ohio; Louisville & Nashville; St. Louis, Troy & Eastern; St. Louis & O'Fallon; and Belleville Electric, and owing to the keen competition of the electric roads there have been frequent and marked fluctuations in the rates to East St. Louis. At times they have been as low as \$2, and even \$1, per car. However, from June, 1906, until January, 1909, the rate was 40 and then 42 cents per ton, which made through charges from the mines to Omaha of \$2.20 and \$2.22, respectively. There was during this period, and is at present, a differential between the two groups ranging from 7½ to 17½ cents per ton via the various lines. In January and February, 1909, the rates from both groups were reduced, a 25-cent rate being established from the inner group by most of the lines, which rate is effective at the present time, making a through charge of \$2.25 per ton to Omaha.

The total through charges from the mines to destination are not in their entirety directly challenged, the lines carrying the coal into East St. Louis not being made parties to this proceeding, but complainants contend that inasmuch as the rate of \$1.80 from East St. Louis had been maintained for a large part of the time during a period of some years, this rate should be held reasonable and the advance condemned. They allege that the advance was brought about because of the reduction in the local rates from the mines to East St. Louis, which resulted in lower combined charges to Omaha than had formerly existed; that this reduction in the local rates to East St. Louis was caused by competition between the roads carrying coal from the mines to that point, and that complainant shippers and

consumers at Omaha are denied the benefits of this competition by the action of the defendant carriers.

It is shown by the defendants that there is a natural relationship between through rates from points on their lines in the state of Illinois to Omaha and the through charges from the mines in the inner and outer groups, and that the continuance of the \$1.80 rate from East St. Louis to Omaha in conjunction with the reduced local rates to East St. Louis would of necessity compel reductions to Omaha over direct lines from points in Illinois as far north as Chicago, and would, in fact, result in the necessity for a general readjustment of coal rates to Missouri River points. Defendants lay particular stress on their contention that the charges from the mines to Omaha are reasonable and but a few cents higher than the through charges during the periods when the \$1.80 rate was in effect.

It is manifest that the rate from East St. Louis to Omaha on Illinois coal has at all times had reference to competitive conditions, including those affecting rates to East St. Louis, and since it has often been held, and properly, as we think, that a carrier may establish rates of this kind for competitive reasons lower than it could justly be compelled to establish, it does not seem to us that the long existence of a rate established and maintained under former and different conditions (not altered by any illegal act of its own) than those now existing should have the same weight and force as proof in the nature of an admission of reasonableness of the former rate as would ordinarily attach to the long continuance of a rate voluntarily established and maintained under other conditions.

We are therefore brought to a consideration of the reasonableness of the rate of \$2 from East St. Louis to Omaha, which is carried as a local. Via the Wabash, with its short-line mileage of 413 miles, the revenue per ton-mile is 4.84 mills, but out of this must be paid a bridge charge of 20 cents per ton across the Mississippi and \$4 per car across the Missouri River. The mileage via the Missouri Pacific is 487, which yields a revenue per ton-mile of 4.10 mills, out of which a bridge charge of 20 cents per ton must be deducted. The Chicago, Burlington & Quincy has two routes, its west-side line having a mileage of 466.5 and its east-side line of 507.2, yielding revenue of 4.28 and 3.94 mills, respectively. Via the west-side line, however, there is a bridge charge of 20 cents per ton. All of the defendants absorb switching charges at Omaha and South Omaha when coal is consigned to parties located on other roads, which further reduces their revenue.

A consideration of all the facts, circumstances, and conditions appearing fails to convince us that the rate complained of is unreasonable. The complaint will therefore be dismissed.

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CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT
DURING THE TIME COVERED BY THIS VOLUME.

712. **FARRAR LUMBER COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.**—Rates on lumber from Dalton, Ga., to Wytheville and other points in Virginia. *Chambliss & Chambliss* for complainant. *Fairfax Harrison, C. B. Northrop*, and *Ed Baxter* for defendants. June 10, 1910. Dismissed. Parties agreed as to claim for reparation.

759. **NATIONAL WHOLESALE LIQUOR DEALERS' ASSOCIATION OF AMERICA v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.**—Rates on whisky from New York, Boston, Pittsburg, Buffalo, and other points to Pacific coast terminals. *E. P. Wilson* and *W. M. Hough* for complainant. *Ed Baxter, W. X. Henderson, R. A. Jackson, Elmer H. Wood, C. M. Dawes, L. F. Parker, J. G. Egan, M. L. Clardy, Edw. Barton, M. D. Grover, W. L. Martin, T. M. Schumacher, C. W. Bunn, Fred A. Wann, T. J. Freeman, W. W. Cotton, James Hagerman, J. M. Bryson, Geo. R. Peck, S. McBirney, Wm. F. Herrin, Henry T. Rogers, Robert Dunlap, Lawrence Maxwell, jr., Edw. Colston, S. O. Bayless*, and *P. F. Dunne* for defendants. June 15, 1910. Dismissed for want of prosecution.

1253. **JACKSON LUMBER COMPANY v. CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.**—Rates on yellow-pine lumber from Southwestern Freight Association territory and the Mississippi Valley Southeastern territory via Pinners Point, Va., to all points in New York, Pennsylvania, New Jersey, and the New England States. *Edwin Allan Swingle, W. W. Flournoy*, and *B. T. Strauss* for complainant. *John G. Wilson, Geo. Stuart Patterson, Geo. V. Massey, Ed Baxter, T. H. Willcox, C. B. Northrop, R. Walton Moore, C. T. Airey*, and *Henry Wolf Bikle* for defendants. June 10, 1910. Dismissed for want of prosecution.

1264. **HYSHAM & MCPHERSON v. CHICAGO, BURLINGTON & QUINCY RAILWAY COMPANY.**—Terminal charge on cattle at Chicago from Wyoming and Montana. *Hysham and McPherson* for complainant in person. *Hale Holden* for defendant. June 10, 1910. Dismissed.

1505. **SUN RIVER STOCK & LAND COMPANY v. GREAT NORTHERN RAILWAY COMPANY ET AL.**—Terminal charge on cattle at Chicago, Ill. *Henry N. Blake* for complainant. *Hale Holden, Wm. R. Begg*, and *Winston, Payne, Strawn & Shaw* for defendants. June 10, 1910. Dismissed.

1651. **IRA E. CRAMPTON & SON v. CINCINNATI NORTHERN RAILROAD COMPANY.**—Refusal to establish switch connection at Celina, Ohio. *J. D. Johnson* for complainant. *L. J. Hackney, B. B. Nelson*,

and *Frank L. Littleton* for defendants. October 4, 1910. Dismissed on motion of complainant; complaint satisfied.

2094. *THE AULT & JACKSON COMPANY v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY*.—Rates on lumber from St. Francis, Ark. *S. H. West* for defendant. October 12, 1910. Dismissed, following No. 1438.

2095. *E. L. EDWARDS v. LOUISIANA & ARKANSAS RAILWAY COMPANY ET AL.*—Rates on yellow-pine lumber. *F. S. Bright* for complainant. June 13, 1910. Dismissed on motion of complainant; claims are included in individual petitions filed against the several carriers.

2184. *E. L. EDWARDS v. ST. LOUIS SOUTHWESTERN RAILWAY COMPANY*.—Unreasonable advance in lumber rates. *F. S. Bright* for complainant. October 12, 1910. Dismissed, following No. 1438.

2216. *DELRAY SALT COMPANY v. WABASH RAILROAD COMPANY ET AL.*—Rates on salt from Detroit, Mich., to East St. Louis, Ill., and all other rates on commodities contained in I. C. C. No. 95. *Moore & Moore* for complainant. *O. E. Butterfield, Clyde Brown, Chas. A. Schmeattau, N. S. Brown, and W. H. Wylie* for defendants. November 7, 1910. Dismissed on motion of complainant.

2257. *O'BRIEN COMMERCIAL COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Rates on bedroom furniture from Thomasville, N. C., to San Francisco, Cal. *J. O. Bracken* for complainant. *Ed Baxter, C. B. Northrop, R. Walton Moore, Robert Dunlap, James Hagerman, Jos. M. Bryson, S. A. Lynde, F. C. Dillard, C. W. Durbrow, P. F. Dunne, T. J. Norton, E. W. Camp, and N. P. Bundy* for defendants. November 8, 1910. Dismissed; following No. 1934.

2593. *WISCONSIN PULP & PAPER MANUFACTURERS v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Rates on iron cores from Grand Rapids, Mich., to Grand Rapids, Wis. *W. D. Hurlburt* for complainant. *McPherson, Bills & Streeter, H. E. Pierpont, and Wm. Ellis* for defendants. June 1, 1910. Transferred to Special Docket for adjustment.

2660. *F. M. FINLEY & SON v. WASHINGTON, ALEXANDRIA & MOUNT VERNON RAILWAY COMPANY*.—Rates on soda and mineral waters from Washington, D. C., to Alexandria, Va. (and return of empty bottles). *Moore, Barbour & Keith, R. Walton Moore and James R. Caton* for defendant. October 12, 1910. Dismissed for want of prosecution.

2679. *MURRAY'S LINE v. DELAWARE & HUDSON COMPANY*.—Cancellation of through rates. *Wm. J. & Wm. C. Roche* for complainant. *Lewis E. Carr and John E. MacLean* for defendant. July 19, 1910. Dismissed without prejudice on application of complainant.

2714. *T. W. KEEVENY LUMBER COMPANY v. MOBILE, JACKSON & KANSAS CITY RAILROAD COMPANY ET AL.*—Rates on poplar lumber

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from Laurel, Miss., to Cincinnati, Ohio. *Coldren & Fenning* for complainant. *E. B. Peirce* and *M. R. Waite* for defendants. December 5, 1910. Dismissed. Straight overcharge to be refunded.

2747. *BLODGETT MILLING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Rates on flour from Janesville, Wis., to Denver, Colo. *Frank H. Blodgett* for complainant. *N. H. Loomis*, *Wm. Ellis*, *Robert Dunlap*, *T. J. Norton*, *James L. Coleman*, *F. C. Dillard*, *L. T. Wilcox*, *F. G. Wright* and *D. L. Meyers* for defendants. September 6, 1910. Dismissed on motion of complainant.

2767. *JACKSON IRON & STEEL COMPANY ET AL. v. NORFOLK & WESTERN RAILROAD COMPANY ET AL.*—Rates on coke from Pocahontas District to Wellston and Jackson, Ohio. *Samuel O. Bayless* for complainant. *Ed Baxter*, *R. Walton Moore*, *Edw. Colston*, *Edw. Barton* and *W. R. Waite* for defendants. October 3, 1910. Dismissed on motion of complainant; complaint satisfied. Reparation, \$1,140.05.

2867. *INDEPENDENT OIL COMPANY v. PITTSBURG & LAKE ERIE RAILROAD COMPANY ET AL.*—Rates on oil from Coraopolis, Pa., to San Francisco, Cal. *J. O. Bracken* for complainant. *Wm. Ellis*, *O. E. Butterfield*, *F. C. Dillard*, *C. W. Durbrow*, and *P. F. Dunne* for defendants. August 17, 1910. Dismissed on motion of complainant.

2927. *VOGELER SEED & PRODUCE COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Rates on alfalfa seed from Lamar, Colo., to San Francisco, Cal. *Smith & Pue* for complainant. *E. N. Clark*, *T. L. Philips*, *Robert Dunlap*, *T. J. Norton*, *J. L. Coleman*, *F. C. Dillard*, *P. F. Dunne*, *C. W. Durbrow*, *Wm. F. Herrin*, and *P. L. Williams* for defendants. December 6, 1910. Dismissed on motion of complainant; complaint satisfied.

2932. *MCCLOUD RIVER LUMBER COMPANY ET AL. v. SOUTHERN PACIFIC COMPANY ET AL.*—Rates on lumber from Sisson, Cal., to various points in Kansas, Nebraska, Missouri, Iowa, Texas, and Oklahoma. *Pillsbury*, *Madison & Sutro* and *Chas. L. Brown* for complainant and interveners. *E. L. Sargent*, *J. S. Stearns*, *E. N. Clark*, *T. L. Philips*, *E. B. Peirce*, *Wm. Ellis*, *Robert Dunlap*, *T. J. Norton*, *J. L. Coleman*, *A. W. Houston*, *Hawkins & Franklin*, *A. P. Humburg*, *S. A. Lynde*, *F. C. Dillard*, *P. F. Dunne*, *C. W. Durbrow*, *Wm. F. Herrin*, *Jos. F. Kiany*, *Warren Olney, jr.*, *E. G. Buckland*, *James Hagerman*, *Jos. M. Bryson*, *M. F. Watts*, *M. L. Clardy*, *Jas. C. Jeffery*, *Spoontz*, *Thompson & Barwise*, *F. E. Whitted*, *Wm. Hodgdon*, *G. B. Fernald*, *D. M. Sirobe*, *D. L. Gray*, *H. A. Taylor*, *H. Murray Andrews*, *Claude Pollard*, *Wilson*, *Warren & Child*, *Ed Baxter*, *C. B. Northrop*, *Lindabury*, *Depue & Faulks*, *Wm. C. Coleman*, *W. W. Cotton*, *W. A. Robbins*, *Chas. Heebner*, *S. H. West*, *Roy F. Britton*, *F. W. Beatty*, *Wm. J. 19 I. C. C. Rep.*

Turner, John H. Clarke, O. E. Butterfield, Clyde Brown, Winston, Payne, Straun & Shaw, C. O. Hunter, and M. R. Waite for defendants. June 15, 1910. Transferred to Special Docket for adjustment.

3013. *WEED LUMBER COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.*—Rates on doors from Weed, Cal., to Trinidad, Colo. *Pillsbury, Madison & Sutro* and *C. L. Brown* for complainant. *E. N. Clark, J. G. McMurry, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, and Nathan P. Bundy* for defendants. November 8, 1910. Dismissed on motion of complainant; complaint satisfied.

3059. *ISELL BROWN COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.*—Rates on dried beans from Dimondale, Mich., to Plaquemine, La. *Wm. N. Isbell* for complainant. *E. L. Sargent, Ed Baxter, R. Walton Moore, O. E. Butterfield, Clyde Brown* for defendants. October 11, 1910. Dismissed on motion of complainant. Overcharge of \$14.87 refunded.

3080. *TENNESSEE CENTRAL RAILROAD COMPANY v. ALABAMA GREAT SOUTHERN RAILROAD COMPANY ET AL.*—Cancellation of joint through rates. *S. W. Fordyce, jr., Byrne & Cutcheon, and A. B. Newell* for complainant. *S. F. Andrews, R. Walton Moore, C. B. Northrop, S. S. Perry, F. C. Bryan, C. D. Norton, and F. W. Gwathmey* for defendants. June 15, 1910. Dismissed on motion of complainant.

3092. *NORTHERN HARDWARE & SUPPLY COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Rates on steel wire from Cuyahoga Falls, Ohio, to Menominee, Mich. *R. L. Varney* for complainant. *Wm. Ellis and Bills & Streeter* for defendants. June 27, 1910. Dismissed on motion of complainant; complaint satisfied.

3102. *C. W. RISDEN v. BOSTON & ALBANY RAILROAD COMPANY ET AL.*—Rates on motorcycles to Los Angeles from Denver, Colo., Springfield, Mass., Scandia, Kans., and Mertztown, Pa. *J. O. Bracken* for complainant. *H. A. Taylor, T. H. Burgess, Robert Dunlap, T. J. Norton, James L. Coleman, Charles Heebner, E. G. Buckland, M. L. Bell, O. E. Butterfield, Clyde Brown, F. C. Dillard, P. F. Dunne, C. W. Durbrow, and Wm. F. Herrin* for defendants. September 12, 1910. Dismissed on motion of complainant.

3106. *SHANNON COPPER COMPANY v. COLORADO & SOUTHERN RAILWAY COMPANY ET AL.*—Misrouting of coal from Colorado mines to Clifton, Ariz. *David A. Ellis* for complainant. *Robert Dunlap, T. J. Norton, E. E. Whitted, Robert H. Widdicombe, P. F. Dunne, F. C. Dillard, C. W. Durbrow, Wm. F. Herrin, M. J. Egan, Hawkins & Franklin and Caldwell Yeaman* for defendants. July 25, 1910. Dismissed on motion of complainant; complaint satisfied.

3107. **SHANNON COPPER COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.**—Misrouting and rates on lumber to Clifton, Ariz., from California, Texas, and Louisiana points. *David A. Ellis* for complainant. *Baker, Botts, Parker & Garwood, F. C. Dillard, E. L. Sargent, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, M. J. Egan, and Hawkins & Franklin* for defendants. July 25, 1910. Dismissed on motion of complainant; complaint satisfied.

3108. **SHANNON COPPER COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.**—Rates on fuel oil from Bakersfield district, Cal., and Gates, Tex., to Clifton, Ariz. *David A. Ellis* for complainant. *E. L. Sargent, Baker, Botts, Parker & Garwood, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, Hawkins & Franklin, and M. J. Egan* for defendants. July 25, 1910. Dismissed on motion of complainant; complaint satisfied.

3111. **ANTON CARLSON v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.**—Passenger colonist tickets from Rhineland, Wis., to Cœur d'Alene, Idaho, via St. Paul, Minn. *McNaughton & Berg* for complainant. *A. H. Bright and Charles Donnelly* for defendants. October 10, 1910. Dismissed on motion of complainant.

3134. **PIONEER COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.**—Rates on buckwheat from Plainwell, Mich., to Freeport, Ill. *Frank H. Blodgett* for complainant. *Wm. Ellis, O. E. Butterfield, F. H. Schmitt, and F. G. Wright* for defendants. July 11, 1910. Transferred to special docket for adjustment.

3157. **SAM T. YOUNG v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.**—Rates on emigrant outfit from Allensville, Ky., to Bovina, Tex. *S. J. Dodson* for complainant. *Ed Baxter, M. L. Bell, Robert Dunlap, T. J. Norton, James L. Coleman, A. B. Spencer, C. E. Gustavus, and I. Brinker* for defendants. November 14, 1910. Dismissed for want of prosecution.

3173. **THE R. A. KELLY COMPANY v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.**—Rates on coil rope from Xenia, Ohio, to Eros, La. *Marcus Shoup* for complainant. *M. L. Bell, Grisham and Oglesby & Stennis* for defendants. September 23, 1910. Transferred to special docket for adjustment.

3175. **UNITED STATES OF AMERICA v. OREGON RAILROAD & NAVIGATION COMPANY ET AL.**—Rates on horses from Walla Walla, Wash., to Fort Duchesne, Utah, via Dragon, Utah. *Hon. J. M. Dickinson, Secretary of War*, for complainant. *W. W. Cotton, F. C. Dillard, P. L. Williams, and M. W. Cooley* for defendants. October 6, 1910. Dismissed on motion of complainant; straight overcharge of \$60 refunded.

3181. **MASSILLON IRON & STEEL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.**—Rates on iron pipe from Massillon, Ohio, to Bagley, Iowa. *Wm. Ellis, Wm. Hodgdon, A. P.*

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Burgwin, and *F. G. Wright* for defendants. December 5, 1910. Dismissed for want of prosecution.

3206. *PHILIP KLEIN v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.*—Rates on sugar from Plaquemine, La., to Evansville, Ind. *Philip Klein* for complainant in person. September 23, 1910. Transferred to special docket for adjustment.

3255. *S. C. REES v. QUINCY, OMAHA & KANSAS CITY RAILROAD COMPANY ET AL.*—Rates on green apples from Stahl, Mo., to Kokomo, Ind. *Herbert Haase, J. G. Trimble, Hale Holden, O. E. Butterfield*, and *Clyde Brown* for defendants. December 5, 1910. Dismissed for want of prosecution.

3269. *BROWN-CAMP HARDWARE COMPANY v. ST. PAUL & DES MOINES RAILROAD COMPANY ET AL.*—Rates on agricultural implements from Ashtabula, Ohio, to Des Moines, Iowa. *G. M. Stephen* for complainant. *A. P. Humburg, Blewett Lee, O. E. Butterfield, Clyde Brown*, and *J. H. Funk* for defendants. July 5, 1910. Transferred to special docket for adjustment.

3278. *WARREN DILLY TIE & TIMBER COMPANY, LTD., v. LOUISVILLE & NASHVILLE RAILROAD COMPANY.*—Rates on cross-ties from Waveland, Miss., to New Orleans, La. *Leckie, Fulton & Coz and Dart, Kernan & Dart* for complainants. *Wm. G. Dearing* for defendant. October 26, 1910. Transferred to special docket for adjustment.

3287. *C. KOEHLER COMPANY ET AL. v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.*—Rates on soft coal from Colorado points to points in Nebraska. *John M. Ragan* for complainant. *Hale Holden, J. E. Kelby*, and *C. E. Spens* for defendants. December 5, 1910. Dismissed for want of prosecution.

3292. *DELRAY SALT COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.*—Rates on salt from Detroit, Mich., to Cincinnati, Ohio. *Jos. P. Tracy* for complainant. *O. E. Butterfield, Clyde Brown*, and *M. R. Waite* for defendants. November 14, 1910. Dismissed for want of prosecution.

3331. *CITY OF SANTA MONICA, CAL., v. SOUTHERN PACIFIC COMPANY ET AL.*—Cancellation of through routes. *Harris W. Taft and Tanner, Taft & Odell* for complainant. *Robert Dunlap, T. J. Norton, James L. Coleman, G. E. Newlin, F. C. Dillard, P. F. Dunne, C. W. Durbrow, Wm. F. Herrin, Frank Karr*, and *J. M. McKinley* for defendants. November 8, 1910. Dismissed on motion of complainant; complaint satisfied.

3338. *C. C. FOLLMER & COMPANY v. LEHIGH VALLEY RAILROAD COMPANY.*—Unreasonable cooperage, insurance, and storage charges on lumber from Pacific coast to Astoria, N. Y. *C. C. Follmer* for complainant. July 26, 1910. Dismissed on motion of complainant; complaint satisfied.

3339. **ARABOL MANUFACTURING COMPANY v. SOUTH BROOKLYN RAILWAY COMPANY.**—Misrouting of shipment of starch from Brooklyn, N. Y., to Chicago, Ill. *G. W. Darling* for complainant. July 18, 1910. Dismissed on motion of complainant; complaint satisfied.

3367. **RICHARDSON SHOE COMPANY v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.**—Misrouting of shipment of scrap leather from Brockton, Mass., to Menominee, Mich. *R. L. Varney* for complainant. September 27, 1910. Dismissed on motion of complainant; complaint satisfied; reparation, \$6.12.

3369. **WILLIAM K. NOBLE v. MARYLAND, DELAWARE & VIRGINIA RAILWAY COMPANY ET AL.**—Demurrage on carload of staves from Hickman, Del., to Cortland, N. Y. *R. B. Coapstick* for complainant. *Geo. Stuart Patterson* for defendants. August 4, 1910. Dismissed on motion of complainant; complaint satisfied.

3392. **VOLLMAR & BELOW COMPANY v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.**—Rates on traction engine and parts from Stillwater, Minn., to Medford, Wis. *F. Vollmar* for complainant. *C. W. Bunn* and *Charles Donnelly* for N. P. Ry. Co. September 12, 1910. Dismissed on motion of complainant.

3423. **JOHN H. KAISER LUMBER COMPANY v. CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY ET AL.**—Rates on lumber from Eau Claire, Wis., to Rochester, Minn. *O. M. Roger* for complainant. September 13, 1910. Dismissed on motion of complainant.

3428. **WESTERN STONEWARE COMPANY v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.**—Rates on stoneware from Monmouth, Ill., to Memphis, Tenn. *H. H. Bonner* for complainant. *S. F. Andrews, Geo. W. Seevers, Hale Holden, Martin L. Clardy, James C. Jeffery, M. P. Calloway* and *C. C. P. Rausch* for defendants. November 14, 1910. Dismissed on motion of complainant. Straight overcharge to be refunded.

3457. **BRIMSTONE RAILROAD & CANAL COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.**—Rates on sulphur and brimstone from Sulphur Mine, La., to Chicago, Ill. *Chas. H. Blatchford* for complainant. *F. C. Dillard, J. P. Blair, R. Walton Moore, S. W. Moore, F. H. Moore*, and *Winston, Payne, Strawn & Shaw* for defendants. November 7, 1910. Dismissed on motion of complainant; complaint satisfied.

3473. **HYDRAULIC-PRESS BRICK COMPANY v. TOLEDO, ST. LOUIS & WESTERN RAILROAD COMPANY.**—Rates on brick from St. Louis, Mo., to Chicago, Ill. *Stewart, Eliot, Chaplin & Blayney* and *Wm. S. Bedal* for complainant. September 13, 1910. Dismissed on motion of complainant.

3490. **THE CORBY COMPANY, INC., v. BALTIMORE & OHIO RAILROAD COMPANY.**—Rates on dried beans from Langdon, D. C., to 19 L. C. C. Rep.

Baltimore, Md. *Chas. D. Drayton* for complainant. October 10, 1910. Dismissed on motion of complainant; complaint satisfied.

3492. *R. J. REYNOLDS TOBACCO COMPANY v. SOUTHERN EXPRESS COMPANY ET AL.*—Rates on smoking tobacco from Winston-Salem, N. C., to Ramona, Okla. *J. L. Graham* for complainant. *Chas. W. Stockton* for defendant. November 2, 1910. Dismissed on motion of complainant. Straight overcharge of 42 cents refunded.

3499. *GAMBLE-ROBINSON FRUIT COMPANY ET AL. v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.*—Rates on fruit from California points to Miles City, Mont., and Bismarck, N. Dak. *Wilson, Mercer, Holsinger, Swan & Ware* and *Fred H. Stinchfield* for complainant. *J. D. Armstrong, F. C. Dillard, C. W. Durbrow, W. R. Kelly, A. S. Halsted, Robert Dunlap, T. J. Norton, James L. Coleman, Emerson Hadley, W. W. Arthur, L. T. Wilcox,* and *F. G. Wright* for defendants. December 12, 1910. Dismissed on motion of complainant; complaint satisfied.

3525. *ACME CEMENT PLASTER COMPANY v. CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY ET AL.*—Cancellation of through routes and joint rates from Acme, Tex., to various points. *John B. Daish* for complainant. September 24, 1910. Dismissed on motion of complainant.

3556. *COLORADO COAL TRAFFIC ASSOCIATION v. COLORADO MIDLAND RAILWAY COMPANY ET AL.*—Rates on coal from South Canon, Colo., to points in Kansas, Missouri, Nebraska, Oklahoma, Texas, and New Mexico. *C. W. Durbin* for complainant. *E. L. Kingsbury, B. M. Haile, Robert Dunlap, T. J. Norton,* and *James L. Coleman* for defendants. October 25, 1910. Dismissed on motion of complainant.

3585. *SIGEL-CAMPION LIVE STOCK COMMISSION COMPANY v. OREGON RAILROAD & NAVIGATION COMPANY ET AL.*—Rates on sheep from Shaniko, Oreg., to Kansas City, Mo. *C. W. White* for complainant. *Robert Dunlap, T. J. Norton, James L. Coleman, W. W. Cotton, F. C. Dillard,* and *P. L. Williams* for defendants. December 13, 1910. Dismissed on motion of complainant.

3586. *BOARD OF TRADE OF THE CITY OF CHICAGO v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Transit privilege on grain at Chicago, Ill. *W. N. Hopkins* and *J. C. Murray* for complainant. *Bells, Streeter & Parker, J. S. Stevens, A. H. Bright, C. L. Sivley, A. P. Humburg, Blewett Lee, Hale Holden,* and *F. E. Learned* for defendants. November 14, 1910. Dismissed on motion of complainant; complaint satisfied.

3654. *S. F. BOWSER & COMPANY v. PENNSYLVANIA COMPANY ET AL.*—Rates on L. C. L. shipments of oil tanks, pumps, and pipes between Fort Wayne, Ind., and various points. *H. J. Grosvenor* and *J. O. Goff* for complainants. *A. P. Humburg, Blewett Lee, C. C. Wight, E. M. Hyzer,* and *Jackson F. Reynolds* for defendants. December 5, 1910. Dismissed on motion of complainant; straight overcharge to be refunded.

REPARATION CASES DISPOSED OF BY THE COMMISSION IN FORMAL
BUT UNREPORTED DECISIONS DURING THE TIME COVERED BY THIS
VOLUME.

2163 (U. R. No. 213). STOCK YARDS COTTON & LINSEED MEAL COMPANY *v.* CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.—Through rate in excess of combination of locals on oil meal from Red Wing, Minn., to Wheaton, Kans. *J. L. Whittington* for complainant. *N. H. Loomis, F. C. Dillard, and William Ellis* for defendants. October 4, 1910. Reparation awarded for \$10.50.

3306 (U. R. No. 214). SPARTANBURG RAILWAY, GAS & ELECTRIC COMPANY *v.* PENNSYLVANIA RAILROAD COMPANY ET AL.—Unreasonable rates on steel rails, bolts, and angle splices from Bessemer, Pa., to Spartanburg, S. C. *F. H. Knox* for complainant. *Claudian B. Northrop, L. Green, George Stuart Patterson, and Geo. D. Dixon* for defendants. October 4, 1910. Reparation awarded for \$180.14.

3300 (U. R. No. 215). STEINHARDT & COMPANY *v.* TEXAS & PACIFIC RAILWAY COMPANY ET AL.—Unreasonable rate on cotton-seed oil from Mineral Wells, Tex., to New Orleans, La. *Hall, Monroe Lemann* for complainant. *W. F. Braggins* for defendants. October 4, 1910. Reparation awarded for \$143.29.

2784 (U. R. No. 216). C. SHENKBERG COMPANY *v.* OREGON SHORT LINE RAILROAD COMPANY ET AL.—Unreasonable rates on sugar from Blackfoot, Idaho, and Garland, Utah, to Sioux City, Iowa. *F. Shenkberg* for complainant. *F. C. Dillard, N. H. Loomis, P. L. Williams, and William Ellis* for defendants. October 4, 1910. Reparation awarded for \$1,813.50.

3301 (U. R. No. 217). CARLISLE COMMISSION COMPANY ET AL. *v.* ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY.—Unreasonable rates on hay from Vera, Okla., and Yates Center, Kans., to Wingate, N. Mex. *Charles D. Carlisle and C. C. Wachtman* for complainants. *Robert Dunlap and T. J. Norton* for defendant. October 10, 1910. Reparation awarded for \$991.17.

3274 (U. R. No. 218). W. H. HOLMES & COMPANY *v.* OREGON SHORT LINE RAILROAD COMPANY ET AL.—Unreasonable rate on baled hay from Ogden, Utah, to Goldfield, Nev. *J. B. Humphries* for complainant. *F. C. Dillard, P. L. Williams, W. R. Kelly, Fred.*

A. Wann, C. O. Whittemore, and J. H. Brown for defendants. October 10, 1910. Reparation awarded for \$163.80.

2778 (U. R. No. 219). *AMERICAN PLOW COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Unreasonable rate on agricultural implement wheels from Laporte, Ind., to Madison, Wis. *G. M. Stephen* for complainant. *William Ellis* and *F. G. Wright* for defendants. October 10, 1910. Reparation awarded for \$22.38.

3291 (U. R. No. 220). *LA CROSSE IMPLEMENT COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on agricultural implements from La Crosse, Wis., to Minneapolis, Minn. *D. B. Davis* for complainant. *William Ellis* for defendant. October 10, 1910. Reparation awarded for \$40.26.

2279 (U. R. No. 221). *STOCKBRIDGE ELEVATOR COMPANY v. ANN ARBOR RAILROAD COMPANY ET AL.*—Unreasonable rate on corn from Custar, Ohio, to Shepherd, Mich. *W. E. Sheldon* for complainant. *Thomas F. Butler* for defendants. October 10, 1910. Reparation awarded for \$5.08.

3230 (U. R. No. 222). *STERLING LUMBER COMPANY v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.*—Misrouting lumber shipped from Lakewood, Fla., and destined to Athens, Ga. *Moore & Pomeroy* and *W. W. Hood* for complainant. *N. W. Proctor* and *A. G. Jackson* for defendants. October 10, 1910. Reparation awarded for \$21.61.

3360 (U. R. No. 223). *PH. ZANG BREWING COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY.*—Unreasonable rate on wooden bungs from St. Louis, Mo., to Denver, Colo. *G. M. Stephen* for complainant. *Hale Holden* and *George H. Crosby* for defendant. October 10, 1910. Reparation awarded for \$21.87.

3038 (U. R. No. 224). *WISCONSIN PULP & PAPER MANUFACTURERS v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rates on pulp wood from Carlton, Cloquet, and Duluth, Minn., to Appleton, Wis. *W. D. Hurlbut* for complainant. *F. G. Wright* and *William Ellis* for defendant. October 10, 1910. Reparation awarded for \$572.52.

2954 (U. R. No. 225). *WISCONSIN PULP & PAPER MANUFACTURERS v. DULUTH & IRON RANGE RAILROAD COMPANY ET AL.*—Unreasonable minimum weight on pulp wood from points on the Duluth & Iron Range Railroad to Grand Rapids, Wis. *W. D. Hurlbut* for complainant. *F. G. Wright* and *William Ellis* for defendants. October 10, 1910. Reparation awarded for \$104.11. No. 2954 (First Amendment). Same *v. Chicago, Milwaukee & St. Paul Railway Company et al.*—Dismissed.

3162 (U. R. No. 226). *ISELL-BROWN COMPANY v. GRAND TRUNK WESTERN RAILWAY COMPANY ET AL.*—Misrouting dried beans shipped Pottersville to Lansing, Mich., and reconsigned to Louisville, Ky.

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W. N. Isbell for complainant. *Charles Clarke* and *W. A. Northcutt* for defendants. October 10, 1910. Reparation awarded for \$38.68.

3163 (U. R. No. 227). *DENNIS J. O'BRIEN & COMPANY v. NORTHERN PACIFIC RAILWAY COMPANY ET AL.*—Misquotation of a rate on bones from Tacoma, Wash., to Rockfall, Conn. *Dennis J. O'Brien* for complainant. *Charles Donnelly*, *S. A. Lynde*, *Charles Heebner*, *Edward Bartow*, *William C. Coleman*, and *Henry C. Starr* for defendants. October 10, 1910. Complaint dismissed.

3087 (U. R. No. 228). *MICHAEL BROTHERS v. ILLINOIS CENTRAL RAILROAD COMPANY ET AL.*—Unreasonable rate on harness leather from Sheboygan Falls, Wis., to Paducah, Ky. *G. M. Stephen* for complainant. *A. P. Humburg* for defendants. October 10, 1910. Reparation awarded for \$12.93.

1138 (U. R. No. 229). *GEORGE D. BURGESS ET AL. v. TRANSCONTINENTAL FREIGHT BUREAU ET AL.*—Unreasonable rates on lumber from various points in Tennessee, Louisiana, Arkansas, Missouri, Oklahoma, Wisconsin, and Michigan to various points in California, Oregon, Washington, and British Columbia. *W. A. Percy* and *Morgan H. Beach* for complainant. *Wallace T. Hughes*, *J. J. Coleman*, *Robert Dunlap*, *T. J. Norton*, *Gardiner Lathrop*, *N. H. Loomis*, *P. F. Dunne*, *F. C. Dillard*, *H. J. Campbell*, *Chas. E. Perkins*, *Chas. N. Burch*, *C. N. Swiley*, and *Sidney F. Andrews* for defendants. October 10, 1910. Reparation awarded for (total) \$6,007.49.

3129 (U. R. No. 230). *WESTERN GAS CONSTRUCTION COMPANY v. WABASH RAILROAD COMPANY ET AL.*—Unreasonable rate on fire brick or fire-brick tile from St. Louis, Mo., to Los Angeles, Cal. *J. P. Lennart* for complainant. *N. S. Brown*, *Robert Dunlap*, and *T. J. Norton* for defendants. October 10, 1910. Reparation awarded for \$520.56.

3168 (U. R. No. 231). *ISELL-BROWN COMPANY v. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY ET AL.*—Alleged unreasonable rate on dried beans from Springport, Mich., to Waterloo, Iowa. *W. N. Isbell* for complainant. *Blackburn Esterline* and *F. S. Hollands* for defendants. October 10, 1910. Complaint dismissed.

3293 (U. R. No. 232). *C. C. CLEMONS PRODUCE COMPANY v. GREAT WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rate on potatoes from Tubers, Colo., to Waco, Tex. *Geo. T. Bell* for complainant. *Charles W. Waterman*, *W. A. Jackson*, *E. E. Whitted*, *J. M. Cates*, *Robert Dunlap*, *T. J. Norton*, *James L. Coleman*, and *Thomas J. Freeman* for defendants. October 10, 1910. Reparation awarded for \$38.16.

3202 (U. R. No. 233). *W. A. JORDAN COMPANY v. CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY ET AL.*—Unreasonable rate on cheese from Plymouth, Wis., to Galesburg, Ill. *G. M. Stephen* for complainant. *Hale Holden*, *George H. Crosby*, *D. L. Meyers*,

William Ellis, F. G. Wright, and S. A. Lynde for defendants. October 10, 1910. Reparation awarded for (total) \$32.65.

2965 (U. R. No. 234). *RACINE-SATTLEY COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on iron castings from Milwaukee, Wis., to Springfield, Ill. *J. F. Morrison* for complainant. *William Ellis, Winston Payne, and Strawn & Shaw* for defendants. November 7, 1910. Reparation awarded for \$29.24.

2215 (U. R. No. 235). *COPPER QUEEN CONSOLIDATED MINING COMPANY v. MORGAN'S LOUISIANA & TEXAS RAILROAD & STEAMSHIP COMPANY ET AL.*—Excessive rate on rice from New Orleans, La., to Bisbee, Ariz. *P. M. Ripley* for complainant. *F. C. Dillard, J. P. Blair, Baker, Botts, Parker & Garwood, P. F. Dunne, C. W. Durbrow, and Hawkins & Franklin* for defendants. November 7, 1910. Reparation awarded for \$51.85.

2749 (U. R. No. 236). *H. J. HEINZ COMPANY v. PERE MARQUETTE RAILROAD COMPANY ET AL.*—Unreasonable rate on salt from Saginaw, Mich., to Ripon, Wis. *C. O. Johnson* for complainant. *Charles McPherson and William Ellis* for defendants. November 7, 1910. Reparation awarded for \$50.32.

3310 (U. R. No. 237). *THOMAS J. BROWNE v. AMERICAN EXPRESS COMPANY ET AL.*—Excessive charge on merchandise from Brooklyn, N. Y., to Valleyford, Wash. *Thomas J. Browne* for complainant in person. *T. B. Harrison, jr.*, for defendants. December 5, 1910. Reparation awarded for 70 cents.

3017 (U. R. No. 238). *NEHRBASS CASKET COMPANY v. PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY ET AL.*—Unreasonable rate on iron grave vaults and cotton wadding from Springfield and Brighton, Ohio, to Fond du Lac, Wis. *G. M. Stephen* for complainant. *William Ellis, F. G. Wright, and S. A. Lynde* for defendants. November 7, 1910. Reparation awarded for \$11.39.

3503 (U. R. No. 239). *NORCROSS BROTHERS COMPANY v. NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY ET AL.*—Unreasonable rate on building marble from Providence, R. I., to Washington, D. C. *P. W. Ward* for complainant. *George Stuart Patterson, Henry Wolf Bikle, and E. J. Rich* for defendants. November 14, 1910. Reparation awarded for \$691.84.

3105 (U. R. No. 240). *H. F. WATSON COMPANY v. NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY ET AL.*—Unreasonable rate on roofing paper from Erie, Pa., to Mondovi, Wis. *J. L. Roberts* for complainant. *John H. Clarke, Richard L. Kennedy, and S. A. Lynde* for defendants. November 14, 1910. Reparation awarded for \$14.18.

(U. R. No. 241). *KALISPELL LUMBER COMPANY ET AL. v. NORTHERN RAILWAY COMPANY.*—Unreasonable rates on
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lumber from the Kalispell territory to various points in North Dakota. *Lind, Ueland & Jerome* for complainants. *J. D. Armstrong* for defendant. November 14, 1910. Specific amount of reparation to be subsequently determined.

2222 (U. R. No. 242). *COPPER QUEEN CONSOLIDATED MINING COMPANY v. BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.*—Unreasonable rate on railroad frogs from East Norwood, Ohio, to Douglas, Ariz. *P. M. Ripley* for complainant. *Baker, Botts, Parker & Garwood, J. P. Blair, F. C. Dillard, Ed. Baxter, R. Walton Moore, and Hawkins & Franklin* for defendants. November 7, 1910. Reparation awarded for \$372.55.

2690 (U. R. No. 243). *NEW ENGLAND FURNITURE & CARPET COMPANY v. MICHIGAN CENTRAL RAILROAD COMPANY ET AL.*—Unreasonable rate on stoves from Dowagiac, Mich., to Minneapolis, Minn. *W. L. Harris* for complainant. *W. C. Rowley and William Ellis* for defendants. November 7, 1910. Reparation awarded for \$12.42.

2843 (U. R. No. 244). *HERF & FRERICH'S CHEMICAL COMPANY v. SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rate on sulphate of ammonia from Ensley, Ala., to St. Louis, Mo. *Nagel & Kirby* for complainant. *E. C. Kramer, Sidney F. Andrews, and J. L. Howell* for defendants. November 7, 1910. Reparation awarded for \$1,236.07.

3144 (U. R. No. 245). *JACKSON GROCERY COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.*—Unreasonable rate on melons from Brawley, Cal., to El Paso, Tex. *Rufus B. Daniel* for complainant. *Baker, Botts, Parker & Garwood, F. C. Dillard, R. S. Stubbs, William F. Herrin, P. F. Dunne, and C. W. Durbrow* for defendants. December 5, 1910. Reparation awarded for \$112.80.

3327 (U. R. No. 246). *ARKANSAS FUEL COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.*—Unreasonable rate on hay from Kansas City, Mo., to Dubuque, Iowa. *J. D. Cole* for complainant. No appearance for defendant. December 5, 1910. Reparation awarded for \$11.43.

2885 (U. R. No. 247). *W. E. TERHUNE LUMBER COMPANY v. GEORGIA & FLORIDA RAILWAY ET AL.*—Unreasonable rate on lumber from Bannockburn, Ga., to Arensburg, Pa. *W. E. Terhune* for complainant. No appearance for defendants. December 5, 1910. Reparation awarded for \$36.64.

2960 (U. R. No. 248). *WESTERN LIME & CEMENT COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on lime from Sherwood, Wis., to Paxton, Ill. *Charles Weiler* for complainant. *William Ellis and A. P. Humburg* for defendants. December 5, 1910. Reparation awarded for \$24.

3408 (U. R. No. 249). *ALBERT MILLER & COMPANY v. GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.*—Unreason-
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able charges caused by the application of an excessive minimum carload weight on potatoes from Cane Brake, Tex., to Fort Wayne, Ind. *J. E. Robinson* for complainant. *F. C. Dillard, L. T. Wilcox, and A. P. Burgwin* for defendants. December 5, 1910. Reparation awarded for \$14.52.

3250 (U. R. No. 250). *ROBINSON CLAY PRODUCT COMPANY v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.*—Unreasonable rates on stoneware from East Akron, Ohio, to North Cucamonga, Cal. *Alvin Hill* for complainant. *F. H. Waters and H. E. Warburton* for defendants. December 5, 1910. Reparation awarded for \$100.45.

3072 (U. R. No. 251). *LINDAUER PULP & MANUFACTURING COMPANY v. DULUTH, RAINY LAKE & WINNIPEG RAILWAY COMPANY ET AL.*—Unreasonable rates on pulpwood from Virginia, Meadowlands, Biwabik, Alborn, Payne, and Holden, Minn., to Merrill, Wis. *W. D. Hurlbut* for complainant. *J. A. Hanson and William Ellis* for defendants. December 5, 1910. Reparation awarded for (total) \$988.77.

2698 (U. R. No. 252). *MENASHA WOODENWARE COMPANY v. WISCONSIN CENTRAL RAILWAY COMPANY ET AL.* No. 2844. *SAME v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on wooden pails and kegs from Menasha, Wis., to various points in Ohio, Indiana, Pennsylvania, and Louisiana. *G. M. Stephen* for complainant. *S. A. Lynde, H. T. Ballard, H. J. Campbell, and R. Walton Moore* for defendants. December 5, 1910. Reparation awarded for (total) \$171.93.

698 and 707 (Sub-Nos. 215 and 541) (U. R. No. 253). *ODEN & ELLIOTT v. SEABOARD AIR LINE RAILWAY ET AL.*—Unreasonable rates on yellow-pine lumber from points in Alabama and Mississippi to various points. *Archibald King* for complainants. *R. Walton Moore, Albert S. Brandeis, and M. P. Callaway* for defendants. December 5, 1910. Specific amount of reparation to be subsequently determined.

3176 (U. R. No. 254). *PABST BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on beer from Milwaukee, Wis., to Duran, N. Mex. *Charles Zeilke* for complainant. *F. G. Wright, W. F. Dickinson, and A. B. Enoch* for defendants. December 5, 1910. Reparation awarded for \$22.75.

3142 (U. R. No. 255). *PABST BREWING COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.*—Unreasonable rate on empty beer packages from Wichita, Kans., to Milwaukee, Wis. *Charles Zielke* for complainant. *D. L. Meyers and F. G. Wright* for defendants. December 5, 1910. Reparation awarded for \$48.12.

3050 (U. R. No. 256). *RUDGEAR-MERLE COMPANY v. DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY ET AL.*—Unreason-

able rates on brass-covered iron tubing from points in the state of New York to points in the state of California. *J. O. Bracken* for complainant. *J. E. Seager, S. A. Lynde, William Ellis, F. C. Dillard, P. F. Dunne, C. W. Durbrow, M. L. Bell, Robert Dunlap, T. J. Norton, J. L. Coleman, Baker, Botts, Parker & Garwood, N. H. Loomis, and John W. Loud* for defendants. December 5, 1910. Reparation awarded for \$346.69.

3123 (U. R. No. 257). *BASKERVILLE & ROWE COMPANY v. SOUTHERN PACIFIC COMPANY ET AL.*—Alleged unreasonable rate on dried fruit from Marysville, Cal., to Watertown, S. Dak. *Seward & McFarland* for complainant. *L. T. Wilcox and D. M. Denison* for defendants. December 5, 1910. Complaint dismissed.

3349 (U. R. No. 258). *MENASHA WOODENWARE COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.*—Unreasonable rate on wooden barrels and wooden kegs from Menasha, Wis., to Shreveport, La. *G. M. Stephen* for complainant. No appearance for defendants. December 5, 1910. Reparation awarded for \$90.09.

2697 and 2711 (U. R. No. 259). *PABST BREWING COMPANY v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.* Nos. 2710, 2726, and 2728. *JOS. SCHLITZ BREWING COMPANY v. SAME.* No. 2734. *PABST BREWING COMPANY v. CHICAGO & ALTON RAILROAD COMPANY ET AL.* No. 3159. *SAME v. CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY ET AL.* No. 3204. *JOS. SCHLITZ BREWING COMPANY v. SAME.* No. 3225. *PABST BREWING COMPANY v. KANSAS CITY SOUTHERN RAILWAY COMPANY ET AL.*—Unreasonable rates on empty beer packages from various points to Milwaukee, Wis. *Charles Zielke and C. J. Bertschy* for complainants. *F. G. Wright, S. A. Lynde, W. F. Dickinson, Hale Holden, James C. Jeffery, and D. L. Meyers* for defendants. December 5, 1910. Complaints dismissed in Nos. 2697 and 2711; 2710, 2726, and 2728; 2734; 3204; 3159 (Original Petition); and 3225 (Original Petition). Reparation awarded in Nos. 3159 (First Amendment); 3225 (First Amendment); and 3225 (Second Amendment), for (total) \$40.43.

2692 (Sub-No. 7) (U. R. No. 260). *E. A. HOWARD & COMPANY v. GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.*—Unreasonable rate on hard-wood lumber from Memphis, Tenn., to San Francisco, Cal. *Cushing & Cushing* for complainant. *F. C. Dillard, C. W. Durbrow, and P. F. Dunne* for defendants. December 12, 1910. Reparation awarded for \$98.90.

2692 (Sub-No. 8) (U. R. No. 261). *E. A. HOWARD & COMPANY v. MINNEAPOLIS, ST. PAUL & SAULT STE. MARIE RAILWAY COMPANY ET AL.*—Unreasonable rate on hard-wood lumber from Glidden, Wis., to San Francisco, Cal. *Cushing & Cushing* for complainant. *F. C.*

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Dillard, C. W. Durbrow, and P. F. Dunne for defendants. December 12, 1910. Reparation awarded for \$49.80.

2637 (U. R. No. 262). *E. A. HOWARD & COMPANY v. GALVESTON, HARRISBURG & SAN ANTONIO RAILWAY COMPANY ET AL.*—Unreasonable rate on hard-wood lumber from Memphis, Tenn., to San Francisco, Cal. *Cushing & Cushing* for complainant. *F. C. Dillard, C. W. Durbrow, and P. F. Dunne* for defendants. December 12, 1910. Reparation awarded for \$475.93.

3201 (U. R. No. 263). *MEDBERRY FINDEISEN COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY ET AL.*—Unreasonable rate on various articles of merchandise from points in the states of New York, New Jersey, Ohio, Indiana, and Virginia, to Oshkosh, Wis. *G. M. Stephen* for complainant. *S. A. Lynde, Howard Ballard, William Ellis, and F. G. Wright* for defendants. November 7, 1910. Reparation awarded for (total) \$21.23.

3048 (U. R. No. 264). *RUDGEAR-MERLE COMPANY v. GOODRICH TRANSIT COMPANY ET AL.*—Unreasonable rate on metal furniture knobs from Grand Haven, Mich., Rome, N. Y., and Waterbury, Conn., to San Francisco, Cal. *J. O. Bracken* for complainant. *T. J. Norton; Charles B. Hopper; J. P. Blair; O. E. Butterfield; E. G. Buckland; C. W. Durbrow; Baker, Botts, Parker & Garwood; Winston, Payne, Strawn & Shaw; and F. C. Dillard* for defendants. December 5, 1910. Reparation awarded for (total) \$49.59.

3419 (U. R. No. 265). *COLUMBUS IRON WORKS COMPANY v. CENTRAL OF GEORGIA RAILWAY COMPANY ET AL.*—Unreasonable rates on plow parts from Columbus Ga., to points on Texas & Pacific Railway in Louisiana. No appearance for complainant. *H. L. Stone and Sidney F. Andrews* for defendants. December 5, 1910. Reasonable rates prescribed for the future. No reparation claimed.

3317 (U. R. No. 266). *GEORGE CRAIG & SONS v. CHESAPEAKE & OHIO RAILWAY COMPANY ET AL.*—Damages caused by misrouting lumber in transit from Winterburn, W. Va., to Irvington Station, N. J., and unreasonable charges on lumber between same points. *William S. Phippen* for complainant. *Henry Wolf Bikle and Edgar A. Boles* for defendants. December 12, 1910. Reparation awarded for (total) \$60.45.

3004 (U. R. No. 267). *SUNDERLAND BROTHERS COMPANY v. BALTIMORE & OHIO SOUTHWESTERN RAILROAD COMPANY ET AL.*—Alleged unreasonable reconsignment charge on coal from Trenton, Ill., to Ceresco, Wahoo, and Fremont, Nebr. *C. E. Childe* for complainant. *C. C. Wright and S. A. Lynde* for defendants. December 12, 1910. Complaint dismissed.

3299 (U. R. No. 268). *MINNEQUA COAL COMPANY v. DENVER & RIO GRANDE RAILROAD COMPANY ET AL.*—Unreasonable rate on pea coal from Tioga, Colo., to Kiowa, Kans. *C. W. Durbin* for com-
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plainant. *E. N. Clark, James C. Jeffery, and H. J. Campbell* for defendants. December 12, 1910. Reparation awarded for \$38.30.

3220 (U. R. No. 269). *LAGOMARCINO-GRUPE COMPANY v. CHICAGO BURLINGTON & QUINCY RAILROAD COMPANY ET AL.*—Unreasonable and unjustly discriminatory rate on peaches from Hartford, Mich., to Davenport, Iowa. *A. C. Slaughter* for complainant. *E. R. Puffer* for defendants. December 12, 1910. Reparation awarded for \$40.20.

3330 (U. R. No. 270). *SABINE LUMBER COMPANY v. LOUISIANA RAILWAY & NAVIGATION COMPANY.*—Misrouting lumber shipped from Colfax, La., and destined to Calvary, Ill. *Milton Schwind* for complainant. No appearance for defendant. December 12, 1910. Reparation awarded for \$8.90.

3329 (U. R. No. 271). *MACGILLIS & GIBBS COMPANY v. CHICAGO & NORTH WESTERN RAILWAY COMPANY.*—Unreasonable rates on cedar ties from Taggett and Hermansville, Mich., to points in Wisconsin and Illinois. *Kanneberg & Cochems*, by *H. O. Wolfe*, for complainant. *S. A. Lynde* for defendant. December 12, 1910. Reparation awarded for \$82.97.

NOTE.—The amount of reparation awarded in the above cases aggregates \$16,146.15.

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**REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF
THE COMMISSION DURING THE TIME COVERED BY THIS
VOLUME.**

1433. **CRUTCHFIELD & WOOLFOLK v. LOUISVILLE & NASHVILLE RAILROAD COMPANY ET AL.** September 30, 1910. Reparation of \$107.07, with interest, on shipments of grapes from Pewee Valley, Ky., to Pittsburg, Pa., on account of excessive rate.

1609. **DARLING & COMPANY ET AL. v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.** October 1, 1910. Reparation of \$928.64, with interest, to Darling & Company, and to E. Rauh & Sons Fertilizer Company, \$87.40, with interest, by Louisville & Nashville Railroad Company, on shipments of phosphate rock from Centerville and Mount Pleasant, Tenn., to various destinations on account of excessive rate.

1609. **DARLING & COMPANY ET AL. v. BALTIMORE & OHIO RAILROAD COMPANY ET AL.** October 29, 1910. Reparation of \$1,258.04, with interest, to Jarecki Chemical Company, by Louisville & Nashville Railroad Company, on shipments of phosphate rock from Centerville and Mt. Pleasant, Tenn., to various destinations by reason of excessive rate.

2667. **LORETZ & KEFLEY v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.** October 4, 1910. Reparation of \$2, with interest, by Texas & Pacific Railway Company, for unreasonable switching charge at El Paso, Tex.

2709. **CONSUMER'S ICE COMPANY ET AL. v. TEXAS & PACIFIC RAILWAY COMPANY ET AL.** October 4, 1910. Reparation of \$290, with interest, to Consumer's Ice Company, and \$64, with interest, to Darbyshire Harvie Iron & Machine Company, by Texas & Pacific Railway Company, for unreasonable switching charge at El Paso, Tex.

2958. **ROBERTSON BROTHERS v. MISSOURI PACIFIC RAILWAY COMPANY.** September 30, 1910. Reparation of \$320.54, with interest, on shipments of corn and wheat from Cook, Nebr., to St. Louis, Mo., on account of excessive rate.

2984. **SUNDERLAND BROTHERS COMPANY v. ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.** July 15, 1910. Reparation of \$44.59, with interest, on shipment of cement from Iola, Kans., to Casper, Wyo., on account of excessive rate.

Nos. 698 and 707. **YELLOW-PINE LUMBER REPARATION CLAIMS.**—Claims for reparation amounting to 2 cents per 100 pounds on shipments of yellow-pine lumber originating in southeastern territory, as defined in the reports heretofore made in the cases of *H. H. Tift et al. v. Southern Railway Company et al.*, and *Central Yellow Pine Association v. Illinois Central Railroad Company et al.*, and destined to points not only on and north of the Ohio River covered by the original orders of the Commission in the above-entitled cases, but also to destinations south of the Ohio River, resulting from the advance in rates which was the subject of complaint in these cases, were filed with the Commission during the years 1907, 1908, and 1909. These claims were based upon the decisions of the Commission in the cases stated and the decrees of the courts enforcing the orders of the Commission. The advances became effective in April and June, 1903, and the final decisions by the Supreme Court were made in May, 1907. These claims were subnumbered on our docket under the numbers of the original complaints before the Commission. They were assigned for hearing at various times and places and in each event were postponed on motion of the parties pending adjustment thereof. Compromise agreements for the settlement of the same were subsequently entered into under dates of January 12, March 18, May 14, and June 15, 1909, providing generally for a checking of the claims through clearing houses maintained by the defendant carriers for that purpose on the basis of the expense bills and other evidence furnished by claimants and the records of the carriers, and for the payment of 67 per cent of the provable claims based upon the 2-cent difference between the former rates and the advanced rates which were condemned and 66 per cent on the part of the claims. These agreements were submitted to the Commission from time to time for its approval at the request of the complainants and defendants and were accordingly approved. On these bases there have been paid up to this date as reported by the clearing houses to 344 claimants various sums indicated in our records aggregating \$919,762.56.

Nos. 1327, 1329, and 1335. **NORTHWESTERN LUMBER REPARATION CLAIMS.**—Claims for reparation in various sums per 100 pounds on carload shipments of lumber, shingles, and other forest products from the Pacific northwest and destined to certain eastern territory, as defined in the reports heretofore made in the above-named cases, 14 I. C. C. Rep., 1, 23, resulting from the advances in rates which were the subject of complaint in these cases, were filed with the

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Commission during the years 1908, 1909, and 1910. The advances became effective in October and November, 1907, and the claims were based upon the findings in said decisions of the Commission rendered on June 2, 1908. The claims were checked up by defendant carriers on the expense bills and other evidence furnished by claimants and the records of the carriers. The various settlements were submitted to the Commission for its approval and were accordingly approved. On this basis there have been paid up to this date, as reported by the parties, to 807 claimants various sums indicated in our records aggregating \$294,512.

NOTE.—The amount of reparation awarded in the above cases aggregates \$1,217,376.84.

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**ORDERS ISSUED INVOLVING REPARATION ON INFORMAL PLEADINGS
FOR THE YEAR ENDING NOVEMBER 30, 1910.**

For the year ending November 30, 1910, the number of orders issued involving reparation on informal pleadings was 3,508; the number of claims denied or otherwise closed during that period was 1,463; and the amount of reparation awarded was \$404,976.78. For a detailed statement of such cases awarding reparation, see Appendix F of the Commission's Twenty-fourth Annual Report.

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ORDER ISSUED INVITING SUBMISSION OF REPORTS
FOR THE YEAR 1900

For the year ending December 31, 1900, the Commission desires to receive from each of the several States, Territories, and Possessions, a report containing the following information:

1. The number of persons who have been admitted to citizenship during the year.
2. The number of persons who have been naturalized during the year.
3. The number of persons who have been granted citizenship by the courts during the year.
4. The number of persons who have been granted citizenship by the Commission during the year.
5. The number of persons who have been granted citizenship by the Commission during the year.
6. The number of persons who have been granted citizenship by the Commission during the year.
7. The number of persons who have been granted citizenship by the Commission during the year.
8. The number of persons who have been granted citizenship by the Commission during the year.
9. The number of persons who have been granted citizenship by the Commission during the year.
10. The number of persons who have been granted citizenship by the Commission during the year.

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ABNORMAL RATE.

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Refund on basis of abnormal rate denied. *Orange Grocery Co. v. M. L. & T. R. R. & S. S. Co.* 502.

ABSORPTION.

Warehouse delivery charge absorbed when road has line haul. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

Switching charge absorbed on coal consigned to parties located on other roads. *Breece-Trenton Mining Co. v. W. R. R. Co.* 598 (600).

Part of water rate absorbed at San Pedro on goods destined to Los Angeles but no absorption on goods destined to San Pedro. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 823 (327).

Switching charge absorbed at Cheltenham, Mo., which is within free switching limits of St. Louis, Mo. *Hydraulic-Press Brick Co. v. St. L. & S. F. R. R. Co.* 554.

Absorption of switching charge is not in itself sufficient proof that charge was unreasonable over nine months before. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (483).

ADDITIONAL CHARGE.

Diversion. *Wilson Produce Co. v. P. R. R. Co.* 1.

Tents, poles, etc., in private theatrical car; additional charge unreasonable. *Chappelle v. L. & N. R. R. Co.* 56 (58).

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ADMINISTRATIVE BODY.

Ought to exercise only such powers as are expressly conferred. *In re Jurisdiction in Alaska*, 81 (93).

ADMINISTRATIVE RULING.

Rule 6, Bulletin 4, adhered to. *Cady Lumber Co. v. M. P. Ry. Co.* 12 (13).

Rule 46, Bulletin 4, adhered to. *In re Nonvalidation of Limited Excursion Tickets*, 440 (442).

Rule 104, Bulletin 4, adhered to. *Stilwell v. L. & H. R. Ry. Co.* 404 (405).

Rule 159 and Rule 186, Bulletin 4, adhered to. *Alpha Portland Cement Co. v. D. L. & W. R. R. Co.* 297 (298).

Rule 200, Bulletin 4, adhered to. *Isbell & Co. v. L. S. & M. S. Ry. Co.* 448 (450).

Rule 206, Bulletin 4, adhered to. *Ullman v. American Express Co.* 354.

Rule 214, Bulletin 4, adhered to. *Isbell & Co. v. L. S. & M. S. Ry. Co.* 448 (450).

Rule in section B, paragraph 67, *Tariff Circular 17-A*, adhered to. *In re Reduced Rates on Returned Shipments*, 109 (417).

ADMISSION.

Long maintenance of subsequently restored rate, without explanation, is in nature of admission of its fairness. *Millar v. N. Y. C. & H. R. R. Co.* 78.

Reparation on basis of abnormal rate denied, though carrier admitted allegations in complaint. *Orange Grocery Co. v. M. L. & T. R. R. & S. S. Co.* 502.

Commission can not base its findings or apply retroactively a privilege merely because carrier is willing. *Cady Lumber Co. v. M. P. Ry. Co.* 12 (14).

ADVANCE.

Tariff carrying increased rates suspended. *Cleary Bros. Co. v. C. & N. W. Ry. Co.* 588 (589).

Order not to be construed as approval of other or future advances. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (470).

Advance not unreasonable, even though for 10 years carrier has regularly paid interest on total bonded debt, and recently paid dividends on its stock. *Id.* 460 (471).

Where former equipment sufficient, acquisition of new equipment does not justify advance, nor does construction of branch lines. *City of Spokane v. N. P. Ry. Co.* 162 (171).

Advance held not unreasonable where former lower rate resulted from competitive conditions. *Breeze-Trenton Mining Co. v. W. R. R. Co.* 598 (600).

Theory rejected that rates may be increased by progressive advances as long as traffic moves freely. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 419 (421).

Rate advanced while commodity at transit point; rate in effect at time of original movement is legal rate. *Southern Cotton Oil Co. v. A. C. L. R. R. Co.* 434 (435).

Commission permitted advance in rate from Buffalo, N. Y., to New York, N. Y., rather than require reduction from all territory west of Buffalo. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 128 (131).

ADVANTAGE.

Every city entitled to advantages of its location. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (309).

Location does not deprive shipper of right to fair treatment. *Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co.* 6 (9).

Dealers at any point are entitled to trade wherever and as far as reasonable rates will permit. *Billings Chamber of Commerce v. C. B. & Q. R. R. Co.* 71 (75).

Discrimination can not be justified against one locality merely because it is smaller than another. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (331).

ADVERTISEMENTS.

Advertisements of excursions should state total amount to be exacted, of which validation is a part. *Riter v. O. S. L. R. R. Co.* 443 (444).

AGENT.

Agent had no authority to bind company by suggesting that round-trip ticket could be secured at another town. *Ballin v. S. P. Co.* 503 (504).

AGREEMENT.

Agreement respecting reparation. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (485); *Felton Grain Co. v. U. P. R. R. Co.* 63 (64).

Car of colored troupe being repaired, carrier agreed to carry it on regular passenger trains. *Chappelle v. L. & N. R. R. Co.* 56 (57).

ALASKA.

Alaska is a district, not a territory; no jurisdiction there. *Humboldt S. S. Co. v. W. P. & Y. Route*, 105; *In re Jurisdiction in Alaska*, 81.

ALLOWANCES.

Allowance of 500 pounds in weight for car stakes. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (483).

No rate reduction will be ordered to remove discrimination caused by tap-line allowances. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50 (53).

ANY-QUANTITY RATE.

Where any-quantity rate in effect, Commission declined to establish lower carload rate. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397 (401).

APPEARANCE.

No appearance at hearing:

Ballin v. S. P. Co. 503 (504).

Craig Lumber Co. v. V. Ry. Co. 144.

Deeves Lumber Co. v. C. & N. W. Ry. Co. 482 (483).

Millar v. N. Y. C. & H. R. R. R. Co. 78.

Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co. 110 (111).

ASSIGNED CARS.

Must be counted against distributive share of mine receiving them. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356; *Jacoby & Co. v. P. R. R. Co.* 392.

Assigned cars must be delivered to particular operator indicated, even though their number exceeds ratable proportion. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (358).

BAGGAGE CAR.

Private car for baggage, containing stove, entitled to baggage car rate. *Chappelle v. L. & N. R. R. Co.* 56 (57).

BERTHS.

Pullman berth rates; rehearing granted. *Loftus v. Pullman Co.* 102.

BILL OF LADING.

Naming one consignee for consolidated shipment. *Davies v. I. C. R. R. Co.* 3 (4). Actual point of origin, and not point from which shipment was billed, determined the rate. *Preston v. C. & O. Ry. Co.* 406 (407).

How to indicate what road is to have line haul and what road is to make terminal delivery. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

Where carrier refused to issue through billing, through route and joint rate ordered to be established. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336.

If Wyandotte Cleaner and Cleanser is to be transported as soda ash, it should be so designated in the billing. *Ford Co. v. M. C. R. R. Co.* 507 (509).

BLANKET RATE.

Advance in blanket rate on lumber not unreasonable. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50.

Terminal rate in blanket adjustment not a fair measure of rates generally. *Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co.* 65 (67).

A governmental authority has not same latitude in fixing blanket rates as carriers themselves. *R. R. Commission of Nev. v. S. P. Co.* 238 (255).

Commission has often approved blanket rates; but blanket rate condemned where it resulted in unreasonable charge. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (226).

The fact that defendants have constructed a system of zone or blanket rates does not justify unreasonable rates to any point. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (309).

In every blanket or zone rate, the nearby point pays a proportionally higher rate than more distant point. *Schmidt & Sons v. M. C. R. R. Co.* 535 (538).

BOAT LINE.

Tugboat company, owned by oil company whose products comprised nearly all tugboat company's business, held not to be entitled to demand through routes and joint rates, even though incorporated as a common carrier. *Gulf Coast Navigation Co. v. K. C. S. Ry. Co.* 544.

BRANCH LINES.

No advance in rates should result from construction of branch lines. *City of Spokane v. N. P. Ry. Co.* 162 (171).

Absence of large earnings on branch lines does not justify unreasonable rate. *Billings Chamber of Commerce v. C. B. & Q. R. R. Co.* 71 (75).

BRIDGE.

Bridge toll as part of rate. *Chicago Car Lumber Co. v. L. & N. R. R. Co.* 438.

Cost of bridge ought not to be charged to traffic of one section. *Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co.* 259 (261).

BULK.

Loading capacity of ice. *Prahlow v. I. H. B. R. R. Co.* 572 (574).

Bulkiness of hay in comparison with its weight. *National Hay Asso. v. M. C. R. R. Co.* 34 (47).

Bulk must be taken into consideration in framing classifications and rates. *Ford Co. v. M. C. R. R. Co.* 507 (509).

Fact that cars of brick can be loaded to their full capacity should be considered in rate making. *Hydraulic-Press Brick Co. v. M. & O. R. R. Co.* 530 (531).

BURDEN OF PROOF.

Of unreasonableness of rate said to be on complainant. *Loftus v. Pullman Co.* 102 (103).

CANCELLATION.

Lawfully established rate remains in force until specifically canceled. *Stilwell v. L. & H. R. Ry. Co.* 404 (405).

CAPITALIZATION.

Referred to. *Portland Chamber of Commerce v. O. R. R. & N. Co.* 265 (280).

Further capitalization as a warrant for advancing rates. (Dissenting opinion.)

Morgan Grain Co. v. A. C. L. R. R. Co. 460 (473).

CAR.

Sale of 1,000 system cars to particular shipper discussed. *Jacoby & Co. v. P. R. R. Co.* 392 (395).

Fuel cars for carrier's own use are embraced within governmental power of regulation. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (358).

Equipment sufficient to meet actual shipments is all the law requires of carrier. *Id.* 356 (361).

Where no discrimination, Commission declined to order defendant to furnish cars in proper repair, clean, dry, and suitable condition for carrying produce. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

CAR DISTRIBUTION.

Mine rating system of car distribution which combines commercial with physical capacity is not unlawful. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (360); *Jacoby & Co. v. P. R. R. Co.* 392 (394).

Private cars and railway fuel cars go to particular operators to which assigned, even though their number exceeds ratable capacity; but all such cars must be counted against distributive share of mine receiving them. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (364).

CAR EARNINGS.

Not unreasonable. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50 (52).

CAR FITTING.

Where no discrimination, Commission declined to compel carrier to strip and brace cars. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

CAR FURNISHING.

Equipment sufficient for actual shipments is all the law requires. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (361).

Mandamus to compel car furnishing. *Id.* 356 (367).

CAR FURNISHING—Continued.

Where no discrimination, Commission declined to compel carrier to furnish cars in proper repair, clean, dry, and suitable condition for carrying produce. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

CAR OFF LINE.

Privately owned hopper cars not permitted to go further west than Chicago. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (595).

CAR PER MILE.

Rate per car per mile entitled to be considered as relative test in rate making. *National Hay Asso. v. M. C. R. R. Co.* 34 (47).

CAR SHED.

Where no discrimination, Commission declined to compel carrier to furnish a car shed under which perishable products could be loaded without damage from the weather. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

CAR SHORTAGE.

Private and assigned cars must be counted against distributive share of mine receiving them. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (364).

CAR SIZE.

Car loaded according to carrier's loading restrictions; weight less than minimum; actual weight should govern. *Oregon Lumber Co. v. O. R. R. & N. Co.* 582.

CAR STAKES.

Allowance of 500 pounds in weight for car stakes. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (483).

Where no discrimination, Commission refused to compel carrier to strip and brace cars. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

CARLOAD AND LESS THAN CARLOAD.

Where any-quantity rate in effect, Commission refused to establish lower carload rate. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397.

More expensive to handle less-than-carload freight. *Id.* 397 (401).

CARRIER'S DUTY.

To use shortest available reasonable route in absence of instructions:

Alpha Portland Cement Co. v. D. L. & W. R. R. Co. 297 (298).

Beekman Lumber Co. v. L. Ry. & N. Co. 343 (345).

Cameron & Co. v. H. E. & W. T. Ry. Co. 146 (147).

Willson Bros. Lumber Co. v. N. S. R. R. Co. 293 (294).

To direct shipment over route carrying rate named. *Block-Pollak Iron Co. v. H. E. & W. T. Ry. Co.* 505; *Alpha Portland Cement Co. v. D. L. & W. R. R. Co.* 297.

Equipment sufficient for actual shipments is all the law requires of carrier. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (361).

Initial carrier should secure shipper's signature to released valuation clause. *Southern Cotton Oil Co. v. S. Ry. Co.* 79 (80).

Sole duty of a carrier is to provide a rate that is reasonable for service performed. *Ponchatoula Farmers' Asso. v. I. C. R. R.* 513 (515).

Duty rests upon carrier to clearly state its rates and charges in its tariff. *Ford Co. v. M. C. R. R. Co.* 507 (511).

Routing notation puts carrier under obligation of utilizing connecting line's facilities to best advantage of shipper. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

If carrier transports private cars of any class, it must in like manner and upon like terms transport all private cars used for the same or similar purposes. *Chappelle v. L. & N. R. R. Co.* 56 (59).

Unloading facilities ample to meet general requirements of community need not, it seems, be enlarged to meet special requirements of single shipper. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290 (292).

CARRIER'S DUTY—Continued.

Carrier should forward by cheaper route or obtain further directions, where the rate does not apply over the route named. *Alpha Portland Cement Co. v. D. L. & W. R. R. Co.* 297 (298).

CHARTER.

Considered from standpoint of controlling or limiting performance of carrier's functions as an agency of interstate commerce. *Hilledale Coal & Coke Co. v. P. R. R. Co.* 356 (369).

Tugboat company, owned by oil company whose products comprised nearly all tugboat company's business was held not entitled to demand through routes and joint rates, even though incorporated as a common carrier. *Gulf Coast Navigation Co. v. K. C. S. Ry. Co.* 544.

CIRCUMSTANCES AND CONDITIONS.

Commercial conditions should be considered. *City of Spokane v. N. P. Ry. Co.* 162 (168).

Circumstances tending to negative presumption of unreasonableness of greater charge to shorter-distance point. *Fisk & Sons v. B. & M. R. R.* 299 (301).

Rates reasonable now may within period of two years become very unreasonable. *National Hay Asso. v. M. C. R. R. Co.* 34 (37).

Less distant junction point served by additional road seems entitled to lower rate. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114 (115).

Difference in commercial importance of two communities can not in law justify unlawful discrimination in rates. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (331).

Dissimilarity of location and competitive conditions at two points prevent the proper measuring of rate at one by that at the other. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336 (339).

No reason why rates should greatly exceed similar rates upon other roads in other portions of the country where density of traffic and conditions of operation are analogous. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (223).

CLAIMS.

Commission declined to require carrier promptly to settle damage claims. *Ponchartroula Farmers' Asso. v. I. O. R. R. Co.* 513 (515).

CLASSIFICATION.

Chile pepper not taken out of classification by commodity rate on "pepper." *Crombie & Co. v. S. P. Co.* 561.

Compo-board. *Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co.* 110.

Cotton shoddy entitled to same rate as cotton piece goods. *Johnson Co. v. Clyde S. S. Co.* 512.

Iron drying racks. *Day Co. v. B. & O. S. W. R. R. Co.* 577 (578).

Pressed brick and fire brick should take same rate. *Hydraulic-Press Brick Co. v. M. & O. R. R. Co.* 530 (531).

Wyandotte Cleaner and Cleanser. *Ford Co. v. M. C. R. R. Co.* 507.

Bulk, value, risk, weight, form in which tendered, etc., must be considered in framing classification. *Id.* 507 (509).

Where classification controls rates, Commission is empowered to pass upon such rates or practices affecting such rates. *National Hay Asso. v. M. C. R. R. Co.* 34 (37).

COLORED PERSONS.

Fact that private cars are owned or occupied by negroes does not justify discrimination. *Chappelle v. L. & N. R. R. Co.* 56 (59). *Id.* (Rehearing.) 456 (457).

COMBINATION CAR.

Rate on combination car inapplicable to private baggage car containing stove. *Chappelle v. L. & N. R. R. Co.* 56.

COMBINATION RATE.

Local rate, restricted to industries and team tracks, was no part of combination.

Prahlow v. I. H. B. R. R. Co. 572 (573).

Combination rate with variable minima applicable to locals. *Lull Carriage Co. v. C. K. & S. Ry. Co.* 15 (16).

Lower combination over another route does not present a combination lower than through rate on which presumption obtains that through rate is unreasonable. *Id.* 15 (17).

Cannot apply to shipments moving via one road a combination effective only over another road. *Webster Grocer Co. v. C. & N. W. Ry. Co.* 493 (495).

Class rate, special commodity rate, and another class rate formed combination; carrier, not a party to special commodity rate, not liable for misrouting for not using such combination. *Isbell & Co. v. L. S. & M. S. Ry. Co.* 448 (449).

Where no joint through rate in effect, combination of separately established rates via route of movement constitutes through rate. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452.

COMMISSION'S DUTY.

Should consider rates applied over entire territory likely to be affected by change in rates to particular points. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (309).

Commission should exhaust its activities in developing pertinent facts necessary to full investigation and hearing of complaint. *Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co.* 110 (111).

COMMISSIONS.

Complaint from middleman dismissed. *Schmidt & Sons v. M. C. R. R. Co.* 535 (538).

Person handling shipment on commission basis denied reparation. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114 (116).

COMMODITIES.

Anthracite coal. Pennsylvania fields, through Rotterdam Junction, Troy, and Mechanicsville, N. Y., to Holyoke, Mass. 299.

Antimony ware. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.

Apples. Seymour and Cedar Gap, Mo., to Minneapolis and St. Paul, Minn. 114.

Baggage and passenger cars, theatrical paraphernalia, 56.

Bananas. New Orleans, La., to Texas common points, 22.

Barley. South Dakota, Minnesota, and Iowa points to Omaha, Nebr. 424.

Barrel staves and headings. Malden, Mo., and Arkansas points to Alexandria, Mo., and Keokuk, Iowa, 136.

Baskets. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.

Baskets for grapes. Metropolis, Ill., to Chicago, or Riverdale, Ill., rebilled to Lawton, Mich. 487 (489).

Baskets for grapes or fruit. Traverse City, Mich., to Balcom, Ill. 487.

Baskets, fruit. Dongola, Ill., to Chicago or Riverdale, Ill., rebilled to Paw Paw, Mich. 487 (490).

Beans. Ponchatoula, La., to Chicago, Ill. 513.

Beans, dried. Bad Axe, Mich., to Tulsa, Okla.; and Springport, Mich., to Anniston, Ala. 448.

Beer. Milwaukee, Wis., to Gladstone and Escanaba, Mich. 588.

Beer. Milwaukee, Wis., to San Francisco and Oakland, Cal.; Gothenburg, Nebr.; Cheyenne, Wyo.; Clayton, N. Mex.; Denver, Colorado City, and Pueblo, Colo. 584.

Beer. St. Louis, Mo., via Pueblo, Colo., to Leadville, Colo. 18.

COMMODITIES—Continued.

- Beer bottles, empty. Texas, Louisiana, and Arkansas points to Milwaukee, Wis. 590 (591).
- Beer bottles, secondhand. St. Louis, Mo., to San Antonio, Tex. 29.
- Beer kegs, empty. Texas, Louisiana, and Arkansas points to Milwaukee, Wis. 590 (591).
- Beer packages, empty. Texas, Louisiana, and Arkansas points to Milwaukee, Wis. 590.
- Beets. Ponchatoula, La., to Chicago, Ill. 513.
- Berries. Strawberries. Menomonie Junction, Wis., to St. Paul, Minn. 565.
- Berries. Strawberries. Ponchatoula, La., to Chicago, Ill. 513.
- Bituminous coal. East St. Louis, Ill., to Omaha and South Omaha, Nebr. 598.
- Bituminous coal. Thomas, W. Va., to Tonopah, Nev. 527.
- Bituminous coal. Walsenburg district, Colorado, to Kansas and Nebraska points, 478.
- Blacksmith coal. Lilly, Pa., via Cairo, Ill., to Texarkana, Ark. 527 (528).
- Boots. Brockton, Mass., to New York, N. Y. 539.
- Bottles, beer, empty. Texas, Louisiana, and Arkansas points to Milwaukee, Wis. 590 (591).
- Bottles, beer, secondhand. St. Louis, Mo., to San Antonio, Tex. 29.
- Box cars, narrow-gauge. Onalaska, Ark., to Batchelor, La. 54 (55).
- Box shooks. Pine Bluff, Ark., to Fort Worth, Tex. 141.
- Brick. South Park, Ohio, via St. Louis, Mo., to Fort Smith, Ark. 530 (532).
- Brick, enameled. Cheltenham, Mo., to Chicago, Ill. 554.
- Brick, pressed. Cheltenham, Mo., to Tuscaloosa, Ala. 530.
- Brushes. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Buggy bodies. Moline, Ill., to Kalamazoo, Mich. 15.
- Butter. Omaha, Nebr., to C. F. A. territory, 397.
- Butter. St. Paul and Minneapolis, Minn., to Manistique, Mich., destined to eastern points, 285.
- Cabbage. Lewiston, N. Y., to Houston, Tex. 78.
- Cabbage. Ponchatoula, La., to Chicago, Ill. 513.
- Cabbage. St. Rose, La., via Kenner, La., to Chicago, Ill. 3.
- Cake. Boston, Mass., to points in other states, 454.
- Camphor. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Carrots. Ponchatoula, La., to Chicago, Ill. 513 (518).
- Cars, box, narrow-gauge. Onalaska, Ark., to Batchelor, La. 54 (55).
- Cars, logging, old. Onalaska, Ark., to Batchelor, La. 54.
- Cars, theatrical. Southern territory, 56.
- Catsup. Salt Lake City, Provo, and Ogden, Utah, to Missouri River, Mississippi River, and Chicago, Ill. 218.
- Cement. La Salle, Ill., to Clinton and Camanche, Iowa, 492.
- Cement. Martins Creek, Pa., to Brockton, Mass. 297.
- Cement. Medicine Lodge, Kans., to Spokane, Wash. 139.
- Cheese. Plymouth, Wis., to Danville, Ill. 493.
- Chile pepper. San Francisco, Los Angeles, Tustin, and Anaheim, Cal., to E Paso, Tex. 561.
- Citrus fruits. California points to Salt Lake City, Provo, and Ogden, Utah, 218.
- Citrus fruits. Southern California to the east, 148.
- Class and commodity rates. Atlantic seaboard points to Chicago, Ill., Duluth, Minn., and other western points, 551.

COMMODITIES—Continued.

- Class and commodity rates. Eastern points to San Pedro, Cal. 323.
- Class and commodity rates. Mississippi and Ohio River crossings to Georgia, Alabama, Florida, and Carolina points, 460.
- Class and commodity rates. Spokane, Wash., from eastern points, 162.
- Class rates. Billings, Mont., and Sheridan, Wyo., to Wyoming points, 71.
- Class rates. Chicago, Mississippi River and Missouri River territories, on the one hand, and Utah points on the other, both directions, 218.
- Class rates. Eastern defined territory to Nevada points, 238.
- Class rates. Eastern defined territory between Missouri River and Pittsburg-Buffalo line to Phoenix, Ariz. 257.
- Class rates. Roanoke and Lynchburg, Va., and Cincinnati, Ohio, to Winston-Salem and Durham, N. C. 303.
- Class rates. Sacramento, Cal., to points between Reno, Nev., and Cecil Junction, Utah, 259.
- Class rates. Seattle and Tacoma, Wash., and Portland, Oreg., to Washington, Oregon, Idaho, and Montana points, 265.
- Cleaner (Wyandotte Cleaner and Cleanser). Wyandotte, Mich., to various points, 507.
- Coal. Car distribution, 356; 392.
- Coal. New England points. Demurrage investigation and extension of free time, 496.
- Coal. Pocahontas fields to Durham and Winston-Salem, N. C. 303.
- Coal. Walsenburg district, Colo., to Kansas points, 20.
- Coal, anthracite. Pennsylvania fields to Holyoke, Mass. 299.
- Coal, bituminous. East St. Louis, Ill., to Omaha and South Omaha, Nebr. 598.
- Coal, bituminous. Thomas, W. Va., to Tonopah, Nev. 527.
- Coal, bituminous. Walsenburg district, southern Colorado, to Kansas and Nebraska points, 478.
- Coal, blacksmith. Lilly, Pa., via Cairo, Ill., to Texarkana, Ark. 527 (528).
- Coal, semianthracite. Waverly, N. Y., to Binghamton, N. Y., originating at Bernice, Pa. 549.
- Coal fireplaces. Steubenville, Ohio, to San Francisco, Cal. 65.
- Coke. West Virginia-Pennsylvania ovens to Chicago, Ill. 592.
- Company material. Tennessee Ridge, Tenn., to Shirley, Ind. 438.
- Columns, porch. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Compo-board. Minneapolis, Minn., to Lemmon, S. Dak. 110.
- Concentrates of lead. Coeur d'Alene district, Idaho, to Carnegie, Pa. 60.
- Cooperage. Malden, Mo., and Arkansas points to Alexandria, Mo., and Keokuk, Iowa, 136.
- Corn. Ponchatoula, La., to Chicago, Ill. 513.
- Corn, snap. Calvin, Okla., to De Queen, Ark. 108.
- Corn shucks, corncob meal, corncobs. Dyersburg, Tenn. Transit privilege, 567 (568).
- Cotton linters. Aliceville, Ala., to Philadelphia, Pa. 575.
- Cotton linters. Barnwell, S. C., to Pawtucket, R. I. 79.
- Cottonseed, hulls, meal, oil. Georgia, Alabama, and Tennessee points to Jacksonville, Fla. 336.
- Cottonseed oil. Orangeburg and Sumter, S. C., to Jacksonville, Fla. 336.
- Cottonseed oil. Georgia and Alabama points, refined at Savannah, Ga., reshipped to Massachusetts, Pennsylvania, New Jersey, and New York points, 434.
- Cotton shoddy lining. Philadelphia, Pa., to Chicago, Ill. 512.
- Cross-ties. Rockhouse, Ky., to Brockwayville, Pa. 406.

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- Cross-ties. Tennessee Ridge, Tenn., to Shirley, Ind. 438.
- Cucumbers. Ponchatoula, La., to Chicago, Ill. 513.
- Cutters. Kalamazoo, Mich., to Fond du Lac, Wis. 15.
- Cypress lumber. Gleason, Ark., to Missouri, Kansas, Illinois, Nebraska, and Iowa points, 348.
- Dairy products. Omaha, Nebr., to C. F. A. territory, 397.
- Deciduous fruits. California points to Salt Lake City, Provo, and Ogden, Utah, 218.
- Doors. Minneapolis, Minn., to Lemmon, S. Dak. 110.
- Doors. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Dried beans. Bad Axe, Mich., to Tulsa, Okla.; and Springport, Mich., to Anniston, Ala. 448.
- Dried hides. Salt Lake City, Provo, and Ogden, Utah, to Missouri River, and Chicago, Ill. 218.
- Drying racks, iron. Brighton, Ohio, to St. Louis, Mo. 577.
- Earthenware. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Eggs. Omaha, Nebr., to C. F. A. territory, 397.
- Eggs. St. Paul and Minneapolis, Minn., to Manistique, Mich., destined to eastern points, 285.
- Empty beer packages. Texas, Louisiana, and Arkansas points to Milwaukee, Wis. 590.
- Enameled brick. Cheltenham, Mo., to Chicago, Ill. 554.
- Eschalots. Ponchatoula, La., to Chicago, Ill. 513.
- Express packages. Milwaukee, Wis. Free pick up and delivery limits, 112.
- Fireplaces, gas and coal. Steubenville, Ohio, to San Francisco, Cal. 65.
- Flour. Buffalo, N. Y., to New York and New England points, 128.
- Forest products. New England points. Demurrage investigation and extension of free time, 496.
- Forest products. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Fruit baskets. Dongola, Ill., to Chicago or Riverdale, Ill., rebilled to Paw Paw, Mich. 487 (490).
- Fruit baskets. Traverse City, Mich., to Balcom, Ill. 487.
- Fruits. Apples. Seymour and Cedar Gap, Mo., to Minneapolis and St. Paul, Minn. 114.
- Fruits. Bananas. New Orleans, La., to Texas common points, 22.
- Fruits. Citrus; lemons; oranges. California points to Salt Lake City, Provo, and Ogden, Utah, 218.
- Fruits. Citrus; lemons; oranges. Southern California to the east, 148.
- Fruits. Grapes. Portland, N. Y., to Chicago, Ill., reconsigned to Livingston, Ill., and Benld, Ill. 452.
- Fruits. Strawberries. Ponchatoula, La., to Chicago, Ill. 513.
- Furs, raw. St. Paul, Minn., to New York, N. Y. 354.
- Gas fireplaces. Steubenville, Ohio, to San Francisco, Cal. 65.
- Grain. Buffalo to New York and New England points, 128.
- Grain. Chicago, and East St. Louis, Ill., Louisville, Ky., Columbus and Cincinnati, Ohio, to Durham and Winston-Salem, N. C. 303.
- Grain. Dyersburg, Tenn. Transit privilege, 567.
- Grain. Mississippi and Ohio River crossings to Georgia, Alabama, Florida, and Carolina points, 460.

COMMODITIES—Continued.

- Grain. New England points. Demurrage investigation and extension of free time, 496.
- Grain. Barley, oats, wheat. South Dakota, Minnesota, and Iowa points to Omaha, Nebr. 424.
- Grain products. Buffalo, N. Y., to New York and New England points, 128.
- Grain products. Chicago and East St. Louis, Ill., to Louisville, Ky.; Columbus and Cincinnati, Ohio, to Durham and Winston-Salem, N. C. 303.
- Grain products. Dyersburg, Tenn. Transit privilege, 567 (568).
- Grain products. Mississippi and Ohio river crossings to Georgia, Alabama, Florida, and Carolina points, 460.
- Grain products. New England points. Demurrage investigation and extension of free time, 496.
- Grape baskets. Metropolis, Ill., to Chicago or Riverdale, Ill., rebilled to Lawton, Mich. 487 (489).
- Grape baskets. Traverse City, Mich., to Balcom, Ill. 487.
- Grapes. Portland, N. Y., to Chicago, Ill., reconsigned to Livingston, Ill., and Benld, Ill. 452.
- Grates, gas and coal. Steubenville, Ohio, to San Francisco, Cal. 65.
- Green hides. Salt Lake City, Provo, and Ogden, Utah, to Missouri River, and Chicago, Ill. 218.
- Groceries. Orange, Tex., to Eunice, La. 502.
- Gums. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Hard-wood lumber. Gleason, Ark., to Missouri, Kansas, Illinois, Nebraska, and Iowa points, 348.
- Hay. Chicago and East St. Louis, Ill., Louisville, Ky., Columbus and Cincinnati, Ohio, to Durham and Winston-Salem, N. C. 303.
- Hay. East St. Louis, Ill. Reconsignment, 533.
- Hay. Henderson, Colo., to Breaux Bridge, La. 63.
- Hay. Mississippi and Ohio river crossings to Georgia, Alabama, Florida, and Carolina points, 460.
- Hay. Official Classification territory, 34.
- Hay. Warsaw Junction, Ohio, to Allentown, Pa., reconsigned to Perth Amboy, N. J. 475.
- Headings, barrel. Malden, Mo., and Arkansas points to Alexandria, Mo., and Keokuk, Iowa, 136.
- Hickory spokes. Fort Payne, Ala., and Chattanooga, Tenn., to Ionia, Mich. 458.
- Hides, green and dried. Salt Lake City, Provo, and Ogden, Utah, to Missouri River, and Chicago, Ill. 218.
- Ice. Wolf Lake, Ind., to South Chicago, Ill. 572.
- Iron, scrap. Petersville, Tex., to Carondelet, Mo. 505.
- Iron drying racks. Brighton, Ohio, to St. Louis, Mo. 577.
- Joint. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Junk bottles. St. Louis, Mo., to San Antonio, Tex. 29.
- Kegs, beer, empty. Texas, Louisiana, and Arkansas points to Milwaukee, Wis. 500.
- Lead ore. Coeur d'Alene district, Idaho, to Carnegie, Pa. 60.
- Leeks. Ponchatoula, La., to Chicago, Ill. 513 (518).
- Lemons. California to the east, 148.
- Lemons. California points to Salt Lake City, Provo, and Ogden, Utah, 218.
- Lettuce. Ponchatoula, La., to Chicago, Ill. 513.
- Lining, cotton shoddy. Philadelphia, Pa., to Chicago, Ill. 512.
- Linters, cotton. Aliceville, Ala., to Philadelphia, Pa. 575.

COMMODITIES—Continued.

- Linters, cotton. Barnwell, S. C., to Pawtucket, R. I. 79.
- Liquors. Milwaukee, Wis., to Gladstone and Escanaba, Mich. 533.
- Logging cars, old. Onalaska, Ark., to Batchelor, La. 54.
- Lumber. Atlanta, La., to Detroit, Mich., and Chicago, Ill. 343.
- Lumber. Baker City, Oreg., to Mammoth, Utah, 532.
- Lumber. Beaudette, Minn., to Chicago, Ill., reconsigned in transit to Eladon, Ill. 482.
- Lumber. Bellamy, Ala., to Holly Beach, N. J. 295.
- Lumber. Davisville, Tex., to Santa Rita, N. Mex. 146.
- Lumber. Dothan, Ala., to Roodhouse, Ill., reconsigned to Chicago, Ill. 482 (484).
- Lumber. Durham and Winston-Salem, N. C., to Cincinnati and Columbus, Ohio, 303.
- Lumber. Greenville, Mo., via East St. Louis, Ill., to Roodhouse, Ill. 482 (483).
- Lumber. Hertford, N. C., to Ashland, Ohio, 293.
- Lumber. Lecompt and Cady Switch, La., to Omaha, Nebr., and other points, 12.
- Lumber. New England points. Demurrage investigation and extension of free time, 496.
- Lumber. Newport, Tenn. Transit rates, 522.
- Lumber. Oakdale, La., to Port Arthur, Tex. 50.
- Lumber. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Lumber. Saron, Tex., to Altus, Okla., and Davisville, Tex., to Santa Rita, N. Mex. 146.
- Lumber. Southwestern points to Omaha, Nebr. 419.
- Lumber. Victoria, Va., to Alliance, Ohio, 144.
- Lumber. Wallabout Basin, N. Y. Lighterage, 30.
- Lumber. Williams, Flagstaff, and Cliffs, Ariz., to Arizona points, 119.
- Lumber, cypress and hard-wood. Gleason, Ark., to Missouri, Kansas, Illinois, Nebraska, and Iowa points, 348.
- Lumber, yellow-pine. Louisiana, Texas, Arkansas, and Missouri points to western Nebraska, 333.
- Meat. Mississippi and Ohio River crossings to Georgia, Alabama, Florida, and Carolina points, 460.
- Melons. Watermelons. Lowell, Fla., to Pittsburg, Pa., diverted at Altoona, Pa. 1.
- Melons. Watermelons. Ponchatoula, La., to Chicago, Ill. 513 (518).
- Metals. Coeur d'Alene district, Idaho, to Carnegie, Pa. 60.
- Millwork. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Molasses. Philadelphia, Pa., via Manunka Chunk, N. J., to Buffalo, N. J. 63.
- Motor vehicles. Buffalo, N. Y. Transfer charge, 579.
- Narrow-gauge box cars. Onalaska, Ark., to Batchelor, La. 54 (55).
- Oak cross-ties. Rockhouse, Ky., to Brockwayville, Pa. 406.
- Oats. South Dakota, Minnesota, and Iowa points, to Omaha, Nebr. 424.
- Oil. Caddo oil fields, La., to Texas points and Morgan City, La. 544.
- Oil. Muskogee, Okla., to New Orleans, La. 132.
- Oil, cottonseed. Georgia and Alabama points, refined at Savannah, Ga., reshipped to Massachusetts, Pennsylvania, New Jersey, and New York points, 434.
- Oil, cottonseed. Georgia, Alabama, and Tennessee points to Jacksonville, Fla. 336.
- Oranges. California to the east, 148.
- Oranges. California points to Salt Lake City, Provo, and Ogden, Utah, 218.
- Ore, lead. Coeur d'Alene district, Idaho, to Carnegie, Pa. 60.
- Packing-house products. Chicago and East St. Louis, Ill., Louisville, Ky., Columbus and Cincinnati, Ohio, to Durham and Winston-Salem, N. C. 308.

COMMODITIES—Continued.

- Packing-house products. Mississippi and Ohio river crossings to Georgia, Alabama, Florida, and Carolina points, 460.
- Parsnips. Ponchatoula, La., to Chicago, Ill. 513 (518).
- Passenger cars. Theatrical equipment. Southern territory, 56.
- Pelts, sheep. Salt Lake City, Provo, and Ogden, Utah, to Missouri River, and Chicago, Ill. 218.
- Pepper, chile. San Francisco, Los Angeles, Tustin, and Anaheim, Cal., to El Paso, Tex. 561.
- Petroleum. Caddo oil field, La., to Galveston, Sabine, and Orange, and landings on Neches and Sabine Rivers, all in Texas, and to Morgan City, La. 544.
- Petroleum. Muskogee, Okla., to New Orleans, La. 132.
- Plaster, wall. Syracuse, N. Y., to Boston, Mass., and New York, N. Y. 480.
- Poles, tent. Theatrical equipment. Southern territory, 56.
- Porch columns. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Potatoes. Ponchatoula, La., to Chicago, Ill. 513.
- Poultry. Omaha, Nebr., to C. F. A. territory, 397.
- Pressed brick. Cheltenham, Mo., to Tuscaloosa, Ala. 530.
- Private cars. Theatrical equipment. Southern territory, 56.
- Produce. St. Paul and Minneapolis, Minn., to Manistique, Mich., destined to eastern points, 285.
- Produce. Cabbage. Lewistown, N. Y., to Houston, Tex. 78.
- Produce. Cabbage. St. Rose, La., via Kenner, La., to Chicago, Ill. 3.
- Produce. Ponchatoula, La., to Chicago, Ill. 513.
- Racks, iron drying. Brighton, Ohio, to St. Louis, Mo. 577.
- Radiashes. Ponchatoula, La., to Chicago, Ill. 513 (518).
- Rails, steel, second-hand. Onalaska, Ark., to Batchelor, La. 54.
- Railway equipment. Onalaska, Ark., to Batchelor, La. 54.
- Railway material. Tennessee Ridge, Tenn., to Shirley, Ind. 438.
- Rugs. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Sago. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Sash. Minneapolis, Minn., to Lemmon, S. Dak. 110.
- Sash. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Scrap iron. Petersville, Tex., to Carondelet, Mo. 505.
- Seats. Theatrical equipment. Southern territory, 56.
- Secondhand beer bottles. St. Louis, Mo., to San Antonio, Tex. 29.
- Secondhand steel rails. Onalaska, Ark., to Batchelor, La. 54.
- Semianthracite coal. Waverly, N. Y., to Binghamton, N. Y., originating at Bernice, Pa. 549.
- Sheep. Louisville, Ky., to Columbia, Tenn. 563.
- Sheep pelts. Salt Lake City, Provo, and Ogden, Utah, to Missouri River and Chicago, Ill. 218.
- Shingles. Monroe, La., to Crowell, Tex. 117.
- Shoddy, cotton lining. Philadelphia, Pa., to Chicago, Ill. 512.
- Shoes. Brockton, Mass., to New York, N. Y. 539.
- Shoes. North Adams, Mass., to Sikeston, Mo., via St. Louis, Mo. 422.
- Shooks, box. Pine Bluff, Ark., to Fort Worth, Tex. 141.
- Skidders, steam. Onalaska, Ark., to Batchelor, La. 54.
- Smithing coal. Lilly, Pa., via Cairo, Ill., to Texarkana, Ark. 527 (528).
- Snap corn. Calvin, Okla., to De Queen, Ark. 106.

COMMODITIES—Continued.

- Soda ash (Wyandotte Cleaner and Cleanser). Wyandotte, Mich., to various points, 507.
- Soft coal. East St. Louis, Ill., Omaha and South Omaha, Nebr. 598.
- Soft coal. Thomas, W. Va., to Tonopah, Nev. 527.
- Soft coal. Walsenburg district, Colo., to Kansas and Nebraska points, 478.
- Spokes, hickory. Fort Payne, Ala., and Chattanooga, Tenn., to Ionia, Mich. 458.
- Squash. Ponchatoula, La., to Chicago, Ill. 513 (518).
- Stairwork. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Staves, barrel. Malden, Mo., and Arkansas points to Alexandria, Mo., and Keokuk, Iowa, 136.
- Steam skidders. Onalaska, Ark., to Batchelor, La. 54.
- Steel rails, secondhand. Onalaska, Ark., to Batchelor, La. 54.
- Stove. Theatrical equipment. Southern territory, 56.
- Straw. Official Classification territory, 34.
- Strawberries. Menomonie Junction, Wis., to St. Paul, Minn. 565.
- Strawberries. Ponchatoula, La., to Chicago, Ill. 513.
- Sugar. New Delhi, Cal., to Missouri River and intermediate points, 6.
- Tallow. Salt Lake City, Provo, and Ogden, Utah, to Missouri River, and Chicago, Ill. 218.
- Tapioca. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Tea and tea dust. Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah, 218.
- Tents. Theatrical equipment. Southern territory, 56.
- Theatrical equipment. Southern territory, 56.
- Ties. Rockhouse, Ky., to Brockwayville, Pa. 406.
- Ties. Southport, La., to East St. Louis, Ill., and Mississippi points to New Orleans, La. 314.
- Ties. Tennessee Ridge, Tenn., to Shirley, Ind. 438.
- Timber. Omaha and South Omaha, Nebr., and Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points, 156.
- Timber. Williams, Flagstaff, and Cliffs, Ariz., to Arizona points, 119.
- Vegetables. Chicago, Ill. Unloading, 3.
- Vegetables. Beans, cabbage, lettuce. Ponchatoula, La., to Chicago, Ill. 513.
- Wall plaster. Syracuse, N. Y., to Boston, Mass., and New York, N. Y. 490.
- Washing compound (Wyandotte Cleaner and Cleanser). Wyandotte, Mich., to various points, 507.
- Watermelons. Lowell, Fla., to Pittsburg, Pa., diverted at Altoona, Pa. 1.
- Watermelons. Ponchatoula, La., to Chicago, Ill. 513 (518).
- Wheat. South Dakota, Minnesota, and Iowa points to Omaha, Nebr. 424.
- Wooden buggy bodies. Moline, Ill., to Kalamazoo, Mich. 15.
- Wool. Detroit, Mich., to Boston, Mass. 535.
- Wool. Salt Lake City, Provo, and Ogden, Utah., to Missouri River, and Chicago, Ill. 218.
- Wyandotte Cleaner and Cleanser. Wyandotte, Mich., to various points, 507.
- Yellow-pine lumber. Oakdale, La., to Port Arthur, Tex. 50.
- Yellow-pine lumber and products. Louisiana, Texas, Arkansas, and Missouri points to western Nebraska, 333.

COMMODITY RATE.

Commodity rate should be strictly applied, and such rating on "pepper" does not take "chile pepper" out of classification. *Crombie & Co. v. S. P. Co.* 561 (563).

COMMODITY RATE—Continued.

General policy is to make lower than class rates the rates on commodities the movement of which is deemed necessary to development of mercantile interests and industries. *R. R. Commission of Nev. v. S. P. Co.* 238 (255).

COMMON CARRIER.

No railroad transporting private cars of theatrical companies has been held a private carrier since act took effect. *Chappelle v. L. & N. R. R. Co.* 456.

Tugboat company, owned by oil company whose products comprised nearly all of tugboat company's business, was held not entitled to demand through routes and joint rates, even though incorporated as a common carrier. *Gulf Coast Navigation Co. v. K. C. S. Ry. Co.* 544.

COMMUTATION TICKET.

Initial carrier's tariff did not cancel lower commutation rate named in tariff of another carrier to which initial line was a party; reparation awarded. *Stilwell, v. L. & H. R. R. Co.* 404.

Reparation awarded for unused coupons from exchange scrip book though presented after prescribed time; error in tariff made time limit invalid. *Rickel v. A. T. & S. F. Ry. Co.* 499 (500).

COMPARATIVE RATE.

Box shooks rate should not exceed rate on yellow-pine lumber. *Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co.* 141 (143).

Cake rate may be higher than bread rate but ought not to exceed regular merchandise rate. *Oak Grove Farm Creamery v. Adams Express Co.* 454 (455).

Cottonseed meal and cottonseed hulls compared with cottonseed. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336 (339).

Cotton shoddy given same rate as cotton piece goods. *Johnson Co. v. Clyde S. S. Co.* 512.

Dairy products rate may properly be compared with rates on such products throughout the country, especially where circumstances are similar. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397 (402).

Enameled brick and press brick rates compared. *Hydraulic-Press Brick Co. v. St. L. & S. F. R. R. Co.* 554 (555).

Hickory spokes rate should not exceed rate on hard-wood lumber by more than 3 cents. *Ionia Wagon Co. v. A. G. S. R. R. Co.* 458 (459).

Pressed brick rate reduced to rate on fire brick, fire brick being more valuable than ordinary pressed brick. *Hydraulic-Press Brick Co. v. M. & O. R. R. Co.* 530 (531).

Smithing coal, being of greater value, may properly be charged higher rate than ordinary bituminous coal. *Sligo Iron Store Co. v. U. P. R. R. Co.* 527 (529).

Ties entitled to same rate as lumber. *Chicago Car Lumber Co. v. L. & N. R. R. Co.* 438 (439).

Rates on classes B, C, D, and F not found relatively too high. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (469).

Traffic demanding special service in point of train speed not justly compared with traffic not given such consideration. *Waco Freight Bureau v. H. & T. C. R. R. Co.* 22 (26).

Low rate on coke for blast-furnace use not conclusive of unreasonableness of higher rate on coke for smelting copper, silver, etc. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (597).

Commission's impression is that rates on box shooks, laths, shingles, ties, and certain other rough products of lumber ordinarily do not exceed rate on the lumber from which they are manufactured. *Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co.* 141 (143).

COMPENSATION.

Carrier is prohibited from accepting either more or less or different compensation than that stated in tariff. *Ford Co. v. M. C. R. R. Co.* 507 (511).

COMPETING LINE.

Combination via one line can not be applied to shipment moving via another. *Webster Grocer Co. v. C. & N. W. Ry. Co.* 493 (495).

Rate on another line for similar distance under similar circumstances considered. *City of Spokane v. N. P. Ry. Co.* 162 (177).

Rates not fixed solely with reference to weaker competing line; cost of handling traffic over short and easy line largely influences rate. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (222).

Where carriers granted a transit privilege at Omaha and denied such privilege at Detroit, but the carriers that served Omaha were not the same that served Detroit, petition asking establishment of privilege at Detroit was dismissed. *Schmidt & Sons v. M. C. R. R. Co.* 535 (537).

COMPETITION.

Water competition not proven. *Pennsylvania Smelting Co. v. N. P. Ry. Co.* 60 (61).
 Rebutting presumption of unreasonableness of rate. *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 584 (587).

Water competition created by floating ties down river. *Preston v. C. & O. Ry. Co.* 406 (407).

Seattle can not be used as standard by which to measure Spokane rate. *City of Spokane v. N. P. Ry. Co.* 162 (174).

Competition is an important element in determining reasonableness of rate. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (309).

Rate to competitive point is not fair standard of reasonableness of rate to noncompetitive point. *Id.* 303 (308).

Water competition affecting domestic and export lumber rates. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50 (52).

Rates are strongly influenced or controlled by competition in this case. *Omaha Grain Exchange v. C. & N. W. Ry. Co.* 424 (433).

Vicissitudes of competition among shippers can not be compensated for in the freight rate. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (516).

Carrier may for competitive reasons establish a rate lower than it could justly be compelled by Commission to establish. *Breese-Trenton Mining Co. v. W. R. R. Co.* 598 (600).

Circumstances tending to negative presumption of unreasonableness of greater charge to shorter-distance points. *Fisk & Sons v. B. & M. R. R.* 299 (301).

Low competitive rate on coke for blast furnace use not conclusive of unreasonableness of higher rate on coke for smelting copper, silver, etc. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (597).

Unjust to fix rates so as to destroy business of one concern and create a monopoly in favor of other concerns, even though it be merely incidental to meeting competitive rates. *Spigle & Co. v. S. Ry. Co.* 522 (525).

Higher rate to shorter-distance point justified by proving competition. *Paragon Plaster Co. v. N. Y. C. & H. R. R. R. Co.* 480.

At their pleasure carriers may or may not meet competition, so long as no undue discrimination or preference results. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (329).

That carriers are at liberty to meet water competition in whatever way and at whatever point and to whatever extent they see fit can not be admitted. *City of Spokane v. N. P. Ry. Co.* 162 (168).

COMPLAINT.

Informal letter must contain all elements of a claim to stop running of statute. *Fisk & Sons v. B. & M. R. R.* 299 (300).

Circumstances bearing on questions involved should be presented. *Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co.* 110 (111).

Complaint against all rates between two points is not sufficient; there must be specific attack upon specific rates. *City of Spokane v. N. P. Ry. Co.* 162 (170).

Letter, setting forth nature of claim and expense bills, showing shipments and amount paid, is sufficient. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114.

COMPROMISE.

Reparation claims growing out of reconignment charge compromised. *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.* 533 (534).

Shipper contracted with carrier not to file reparation claim, on compromise basis; filed claim but did not appear at hearing; case dismissed. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (485).

CONCENTRATION.

Special distance rate for concentration between stations on a particular road on goods to be reshipped via that road. *Webster Grocer Co. v. C. & N. W. Ry. Co.* 493 (494).

Attempt to connect outbound interstate movements with inbound movements to a concentrating point under rate not on file with Commission is unlawful. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

CONFISCATORY.

Whether result will deprive carriers of fair return on their property must be considered before making reduction. *City of Spokane v. N. P. Ry. Co.* 162 (173).

CONFLICT IN TARIFF.

Lawfully established rate remains in force until specifically canceled. *Stilwell v. L. & H. R. Ry. Co.* 404 (405).

Two tariff rates on same articles; higher rate should not be charged. *Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co.* 65 (67).

CONNECTING CARRIERS.

Both initial and connecting carriers required to pay reparation; each misrouted same shipments. *Beekman Lumber Co. v. L. Ry. & N. Co.* 343.

CONSOLIDATED SHIPMENT.

Naming one consignee for consolidated shipment. *Davies v. I. C. R. R. Co.* 3 (4).

"Pool" cars for consolidating shipments. *Portland Chamber of Commerce v. O. R. R. & N. Co.* 265 (270).

CONSTRUCTION OF ACT. See SECTIONS ONE, TWO, THREE, etc.**CONTRACT.**

Contract of sale based on anticipated lower rate. *Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co.* 141 (142).

Shipper contracted with carrier not to file reparation claims; filed claim but did not appear at hearing; case dismissed. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (485).

Railroads have right to contract for coal supply with, and send their cars to, particular mines, to exclusion of other mines. *Hilledale Coal & Coke Co. v. P. R. R. Co.* 356 (364).

COST OF OPERATION.

Advance in wages. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 128 (130).

Where transportation conditions are difficult and volume of business comparatively small. *Billings Chamber of Commerce v. C. B. & Q. R. R. Co.* 71 (75).

Cost of operation is somewhat more, and corresponding rates may properly be somewhat higher in this territory than east of the Missouri River. *City of Spokane v. N. P. Ry. Co.* 162 (173).

COST OF OPERATION—Continued.

Wages, price of materials and supplies, greater amount hauled by trains, density of traffic, as affecting cost of operation; and cost of operation on weak competing line considered. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (222). A road is built and operated as a whole and local rates are not to be made with reference to difficulties of each particular portion; heavy grades and tunnels add to cost of operation. *Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co.* 259 (261).

COST OF REPRODUCTION.

Considered in determining reasonableness of rate. *City of Spokane v. N. P. Ry. Co.* 162 (170); *Portland Chamber of Commerce v. O. R. R. & N. Co.* 265 (280).

COST OF SERVICE.

What cost of service implies. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (470). Fast refrigerator car service. *Waco Freight Bureau v. H. & T. C. R. R. Co.* 22 (26). Cost of handling business over short and easy line greatly influences rate. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (222). More expensive to handle less-than-carload freight. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397 (401). Expense of moving citrus fruits under refrigeration. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (154). Cost of reconsignment service. *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.* 533. Whatever may be cost of service, giving greater consideration to trainload than to carload traffic would be to prejudice of small shipper and the public. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (596).

COUNTING PACKAGES.

Rule not unreasonable which compels shippers to count packages of perishable freight. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (521).

COURT.

Commission must follow Supreme Court's decisions. *City of Spokane v. N. P. Ry. Co.* 162 (170); *Fisk & Sons v. B. & M. R. R.* 299 (301).

If there exists any authority to require an express company, which has sold out, to resume business, it is in the courts. *Douglas Shoe Co. v. Adams Express Co.* 539 (542).

CREDIT ACCOUNT.

Cancellation of credit account. *Fisk & Sons v. B. & M. R. R.* 299 (300).

CUSTOM.

Retroactive application of reconsignment privilege not sanctioned, even though carrier's custom was to permit reconsignment without tariff authority. *Cady Lumber Co. v. M. P. Ry. Co.* 12 (13).

DAMAGED GOODS.

No objection to special rate based on value of damaged or defective goods. In re *Reduced Rates on Returned Shipments*, 409 (418).

DAMAGES.

No jurisdiction to require prompt settlement of damage claims. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

Loss sustained through misquotation of rate is no proper ground for damages. *Alabama Lumber & Export Co. v. P. B. & W. R. R. Co.* 295.

Awarded for loss sustained as result of carrier's failure to post tariff changing rate. *Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co.* 108 (109).

Awarded for loss sustained through failure to comply with reconsignment orders; but decline in market price of commodity and commissions for its sale are not within Commission's jurisdiction. *Hanley Milling Co. v. P. Co.* 475.

Awarded against lake-line defendants for damages because of unreasonable advances to cover marine insurance protection which was never given. *Wyman, Partridge & Co. v. B. & M. R. R.* 551.

DAMAGES—Continued.

Agent told passenger that round-trip ticket could be secured at neighboring town; train did not stop long enough to permit purchase of ticket; passenger forced to pay regular fares in both directions; no discrimination being shown, damages were denied. *Ballin v. S. P. Co.* 503.

Complainant entitled to recover damages for loss sustained through discrimination in car distribution. Question of amount of damages, from loss of contracts and sales, etc., reserved for further consideration. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356; *Jacoby & Co. v. P. R. R. Co.* 392.

No damages could be awarded against express company which had sold out. *Douglas Shoe Co. v. Adams Express Co.* 539 (543).

While we now hold that the Adams Co. ought to accord 75-cent rate, it is not apparent that we could or should award damages for their failure to do so. *Id.* 539 (543).

No proof of such undue delay in furnishing additional unloading facilities as to make defendant legally responsible in damages. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290 (292).

Reparation awarded on basis of discriminatory rate charged at competing point; but specific amount of damages to be the subject of further action by Commission. *Spiegle & Co. v. S. Ry. Co.* 522 (526).

Damages directly resulting from violation of act and measurable by difference in rates may be awarded by Commission. *Bowles & McCandless v. L. & N. R. R. Co.* 563 (564).

Damages awarded in difference between rate paid on single-deck and rate applicable, before and after shipment moved, to double-deck cars. *Id.* 563.

DELAY.

Delay of shipments because of lighterage rules. *Moesson Co. v. P. R. R. Co.* 30 (33).

No proof of such undue delay in furnishing additional unloading facilities as to make defendant legally responsible in damages. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290 (292).

Petition, asking that carriers be required to transport goods without delay, dismissed. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513.

DELIVERY. See also FREE DELIVERY.

Carrier may demand legal charges before delivering freight. *Fish & Sons v. B. & M. R. R.* 299 (300).

DEMURRAGE.

On private cars standing on private tracks. *Procter & Gamble Co. v. C. H. & D. Ry. Co.* 556.

Wrongfully collected where no tariff provision therefor. *Beekman Lumber Co. v. L. Ry. & N. Co.* 343 (347).

Unpublished charges and those in excess of published charges must be refunded. *Northern Lumber Mfg. Co. v. T. & P. Ry. Co.* 54 (55).

Demurrage can not be refunded on mere ground that it accrued during controversy as to legal charges. *Fisk & Sons v. B. & M. R. R.* 299 (300).

Complaint for refund of demurrage accruing pending construction of private siding dismissed. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290.

Reparation awarded where demurrage accrued as result of defendant's failure to reconsign according to instructions. *Hanley Milling Co. v. P. Co.* 475.

Investigation and explanation of Uniform Demurrage code; suspension of some tariffs filed thereunder, extension of free time, and appointment of demurrage officer suggested. *In re Demurrage Investigation*, 496.

DESTINATION.

Special proportional rate applied to shipments to Milwaukee, when destined to points east of Illinois-Indiana state line. *Webster Grocer Co. v. C. & N. W. Ry. Co.* 493 (494).

DISCRIMINATION.

- Discrimination not unjust, because of competitive conditions. Corporation Commission of N. C. *v.* N. & W. Ry. Co. 303 (309).
- Free unloading service granted to some shippers and refused to others. *Davies v. I. C. R. R. Co.* 3.
- Proof fails to show discrimination against bananas or against Texas points. *Waco Freight Bureau v. H. & T. C. R. R. Co.* 22 (27).
- Discrimination against spring-wheat mills results from rate adjustment. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 128 (130).
- Discrimination caused by tap-line allowances will not be removed by ordering reduction of rate. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50 (53).
- Fact that cars are owned or occupied by negroes does not justify discrimination against them. *Chappelle v. L. & N. R. R. Co.* 56 (59); *id.* 456 (457).
- Sale of 1,000 system cars to one operator during car shortage viewed, it seems, as discriminatory. *Jacoby & Co. v. P. R. R. Co.* 392 (395).
- Granting free pick-up and delivery of express packages in one part of town and refusal of privilege in another part constituted unjust discrimination. *Strauss v. American Express Co.* 112.
- No jurisdiction over alleged discrimination in wharf facilities in Alaska. *Humboldt S. S. Co. v. W. P. & Y. Route*, 105.
- Discrimination can not be justified against one locality merely because it is smaller than another locality. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (331).
- Not clearly a discrimination, but more in nature of a tort, for carrier to close shipper's switch and refuse to place cars thereon. *Hilldale Coal & Coke Co. v. P. R. R. Co.* 356 (368).
- Rates, presumptively reasonable in themselves, discriminated between various destinations. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (468).
- Discrimination from failure to furnish through routes and joint rates not proven. *Southern California Co. v. S. P. L. A. & S. L. R. R. Co.* 6 (8).
- Because of competition, rate to shorter-distance point in excess of rate to farther-distance point held not discriminatory. *Paragon Plaster Co. v. N. Y. C. & H. R. R. R. Co.* 480.
- Discriminatory not to count against distributive share of mine receiving them, private cars and system and foreign fuel cars. *Hilldale Coal & Coke Co. v. P. R. R. Co.* 356; *Jacoby & Co. v. P. R. R. Co.* 392.
- Ordered that carrier charge no higher milling-in-transit rate at point discriminated against than contemporaneously charged at favored point. *Reparation awarded Spigle & Co. v. S. Ry. Co.* 522 (526).
- Granting free transfer service to private sidings of some consignees and refusing it to complainant held to be unjust discrimination. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).
- It does not appear that complainant's fruit competes with packing-house products so as to render the discrimination undue or damaging to complainant. *Pouchatoula Farmers' Assn. v. I. C. R. R. Co.* 513 (518).
- Omaha and Detroit not being served by same carriers, petition, seeking extension to latter of privilege granted at former, denied. *Schmidt & Sons v. M. C. R. R. Co.* 535 (537).
- Rule held discriminatory which provides that bread rate shall apply to mixed shipments of bread and cake only when at least 50 per cent of the shipment consists of bread. *Oak Grove Farm Creamery v. Adams Express Co.* 454.
- To award reparation upon abnormal rate might result in gross discrimination in favor of complainant. *Orange Grocery Co. v. M. L. & T. R. R. & S. S. Co.* 502-503.

DISCRIMINATION—Continued.

While it is possible that a railroad by maintaining a permanent round-trip fare from Reno and declining a corresponding rate at Elko might unduly discriminate against Elko, no such discrimination is shown here. *Ballin v. S. P. Co.* 503 (504). Where two carriers serve same destination from two different points of origin, neither can be held to discriminate against mills at that destination because it sees fit to make or refuse a rate lower than that is inherently reasonable. *Saginaw & Manistee Lumber Co. v. A. T. & S. F. Ry. Co.* 119 (125).

DISCRIMINATION—CLASSIFIED LIST.**ALLOWANCES:**

Industrial Lumber Co. v. St. L. W. & G. Ry. Co. 50 (53).

ARTICLES:

Banner Milling Co. v. N. Y. C. & H. R. R. R. Co. 128 (130).

Oak Grove Farm Creamery v. Adams Express Co. 454.

FACILITIES:

Chappelle v. L. & N. R. R. Co. 56 (59); *id.* 456 (457).

Hillsdale Coal & Coke Co. v. P. R. R. Co. 356.

Jacoby & Co. v. P. R. R. Co. 392.

Pierce Co. v. N. Y. C. & H. R. R. R. Co. 579 (581).

LOCALITIES:

Banner Milling Co. v. N. Y. C. & H. R. R. R. Co. 128 (130).

Harbor City Wholesale Co. of San Pedro v. S. P. Co. 323.

Schmidt & Sons v. M. C. R. R. Co. 535 (537).

Spiegle & Co. v. S. Ry. Co. 522 (526).

Strauss v. American Express Co. 112.

PERSONS:

Chappelle v. L. & N. R. R. Co. 56 (59); *id.* 456 (457).

Hillsdale Coal & Coke Co. v. P. R. R. Co. 356.

Jacoby & Son v. P. R. R. Co. 392.

Oak Grove Farm Creamery v. Adams Express Co. 454.

Pierce Co. v. N. Y. C. & H. R. R. R. Co. 579 (581).

PRIVILEGES:

Oak Grove Farm Creamery v. Adams Express Co. 454.

Pierce Co. v. N. Y. C. & H. R. R. R. Co. 579 (581).

Schmidt & Sons v. M. C. R. R. Co. 535 (537).

Spiegle & Sons v. S. Ry. Co. 522.

Strauss v. American Express Co. 112.

DISTANCE.

Distance is always a factor in determining reasonableness of rate, but distance alone is not controlling. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (308). Fact that commodity does not ordinarily move to any great distance from mill is entitled to proper weight. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336 (339). Rate on another line for similar distance under similar circumstances considered in determining reasonableness of rate. *City of Spokane v. N. P. Ry. Co.* 162 (177). In passing upon reasonableness of blanket rate, rate to nearest point must be offset against that to more distant point. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (226).

Distance is an element in rate adjustments, and, all other things being equal, it perhaps is a controlling element; but it can hardly control where other substantial considerations are materially different. *Omaha Grain Exchange v. C. & N. W. Ry. Co.* 424 (431).

DISTRIBUTIVE RATE.

Considered. *Billings Chamber of Commerce v. C. B. & Q. R. R. Co.* 71 (75).

DIVERSION.

Without additional charge. *Wilson Produce Co. v. P. R. R. Co.* 1.

Diversion is costly to carrier and advantageous to shipper. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

Shipment was ordered to be diverted before it reached billed destination, in accordance with tariff rule. Reparation awarded for loss sustained from failure to follow instructions. *Hanley Milling Co. v. P. Co.* 475.

DIVISIONS.

Explanation required of extremely high division of rate. *City of Spokane v. N. P. Ry. Co.* 162 (172).

Merely fact that one road is willing to accept a given division is no sufficient reason for establishing a given rate. *Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co.* 136 (137). While divisions are not conclusive of reasonableness of rates, they are sometimes of significance. *R. R. Commission of Nev. v. S. P. Co.* 238 (252).

If Sacramento rate is less than a reasonable rate, it would seem fair that carriers would accordingly demand a lesser division than they would be justified in requiring out of higher rate to intermediate point. *Id.*

Where lake lines received entire advance of joint through rate, order for reparation directed against lake lines alone. *Wyman, Partridge & Co. v. B. & M. R. R.* 551 (553).

DOUBLE-DECK CAR.

Damages awarded in difference between rate paid on single-deck and rate applicable, before and after movement, to double-deck cars. *Bowles & McCandless v. L. & N. R. R. Co.* 563.

EQUALITY.

Equality between great and small is one of underlying principles of the act. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (331).

EQUIPMENT.

Advance not justified because of acquiring new equipment, where former equipment was sufficient. *City of Spokane v. N. P. Ry. Co.* 162 (171).

Utmost obligation is that carrier equip itself with sufficient cars to meet actual shipments. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (361).

ELECTRIC LINE.

Application for through route and joint rate in connection with electric line denied. *Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co.* 6.

ERROR.

Error in tariff resulted in loss to shipper; damages awarded. *Bowles & McCandless v. L. & N. R. R. Co.* 563.

Mistake of shipper as to what rate is applicable to his shipment is no basis for reparation. *Running v. C. St. P. M. & O. Ry. Co.* 565.

Misquotation of rate is no ground for reparation. *Alabama Lumber & Export Co. v. P. B. & W. R. R. Co.* 295; *Newding v. M. K. & T. Ry. Co.* 29.

ESTOPPEL.

Plea of estoppel held not to be good. *National Hay Assn. v. M. C. R. R. Co.* 34 (37).

Estopped from claiming damages upon shipments moving prior to filing complaint.

Ullman v. American Express Co. 354 (355).

Concerted action of carriers in nature of estoppel against them; but acquiescence in rate adjustment did not estop Birmingham from complaining of such adjustment. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (467).

EXCHANGE SCRIP BOOK.

Legality of such books not decided. *Rickel v. A. T. & S. F. Ry. Co.* 499 (500).

EXCURSION RATE.

Ticket must be validated according to tariff. *Riter v. O. S. J. R. R. Co.* 443.

No refund for extra fare paid because of failure to validate ticket in absence of tariff authority. In re *Nonvalidation of Limited Excursion Tickets*, 440.

No discrimination shown to result from maintaining excursion rate from one town and refusing it at another. *Ballin v. S. P. Co.* 503 (504).

EXPEDITED SERVICE.

Between 10 and 11 miles an hour, including stops at divisional points is nothing more than ordinary merchandise schedule. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

EXPORT RATE.

Between Gulf ports. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50 (52).

EXPRESS COMPANY.

Free pick-up and delivery granted in one part of town and refused in another part resulted in unjust discrimination. *Strauss v. American Express Co.* 112.

Commission has authority to require through rate by express company. *Douglas Shoe Co. v. Adams Express Co.* 539 (543).

But Commission can not require an express company which has sold out to resume business. *Id.* 539 (542).

FACILITIES.

Alleged discrimination in wharf facilities in Alaska; no jurisdiction. *Humboldt S. S. Co. v. W. P. & Y. Route*, 105.

Utmost obligation on carrier is to equip itself with cars sufficient to meet actual shipments. *Hilldale Coal & Coke Co. v. P. R. R. Co.* 356 (361).

Private cars of negroes should be moved on same terms as charged other private-car owners. *Chappelle v. L. & N. R. R. Co.* 56; *id.* 456 (457).

Unloading facilities ample to meet general requirements of community need not, it seems, be enlarged to meet special requirements of single shipper. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290 (292).

Where no discrimination, Commission declined to require carrier to furnish a car shed under which perishable freight might be loaded without damage from the weather, or to furnish cars in proper repair, clean, dry, and in suitable condition for carrying produce. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

FALSE BILLING.

Incorrect dating of bills of lading by a carrier is unlawful. *Ford Co. v. M. C. R. R. Co.* 507 (510).

Unless shipments were in fact soda ash and designated as such, they are not entitled to soda-ash rate. *Id.* 507 (509).

FERRY CAR SERVICE.

Granting free transfer service to private sidings of some consignees and refusing it to complainants held to be unjust discrimination. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).

FILING TARIFF.

No through route and joint rate where one of connecting roads did not file tariff with Commission. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452 (453).

Attempt to connect outbound interstate movements with inbound movements to a concentrating point under rates not on file with Commission is unlawful. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

FOURTH SECTION. See LONG AND SHORT HAUL; also, SECTION FOUR.**FREE DELIVERY.**

Free delivery over warehouse platform, when road has line haul. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

Unjust discrimination resulted from granting free delivery in one part of Milwaukee and refusing it in another part. *Strauss v. American Express Co.* 112.

FREE DELIVERY—Continued.

Granting free transfer service to private sidings of some consignees and refusing such service to complainant held unjust discrimination. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).

FREE TRANSPORTATION.

Diminution of free transportation resulted in important increases in revenue. (Dissenting opinion.) *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (472).

FUEL CARS.

Fuel cars must be counted against distributive share of mine receiving them. *Hilledale Coal & Coke Co. v. P. R. R. Co.* 356 (364).

HARTER ACT.

Harter Act discussed. *Wyman, Partridge & Co. v. B. & M. R. R.* 551.

ICING.

Icing charge on fruit and vegetables not unreasonable. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (518).

Icing included in less-than-carload rate; carload shipper charged with expense of refrigeration. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397 (401).

IMPORT RATE.

Import rate on lemons. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (153).

Import rate to Utah points on sago, tea, etc., is unreasonable. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218.

Not applicable to bananas moving from New Orleans to Texas common points. *Waco Freight Bureau v. H. & T. C. R. R. Co.* 22.

IN AND OUT.

Must be proper tariff provisions connecting inbound with outbound movements, thus fixing through charge from producing point. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

Fact that freight has been shipped once and paid one rate can not be taken into consideration in fixing charges for a subsequent transaction. In re *Reduced Rates on Returned Shipments*, 409 (416).

Where existing rate was neither unreasonable nor discriminatory, Commission declined to lower rate merely because carrier had a previous haul on raw material. *Paragon Plaster Co. v. N. Y. C. & H. R. R. R. Co.* 480.

INDUSTRIAL LINE.

Tugboat company, owned by oil company whose products comprised nearly all tugboat company's business, was held not to be entitled to demand through routes and joint rates, though incorporated as a common carrier. *Gulf Coast Navigation Co. v. K. C. S. Ry. Co.* 544.

INDUSTRIAL RATE.

Rate, in this case, upon which business has been built up and maintained, should not be disturbed. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (308).

Business alleged to have been built up on strength of sorting-in-transit privilege; privilege taken away; Commission declined to order its reestablishment. *Schmidt & Sons v. M. C. R. R. Co.* 535.

INSURANCE.

Unreasonable advance to cover marine insurance, which insurance was not given; reparation awarded. *Wyman, Partridge & Co. v. B. & M. R. R.* 551.

INTERCHANGE.

Tugboat company, incorporated as common carrier, was not entitled to demand through routes and joint rates. *Gulf Coast Navigation Co. v. K. C. S. Ry. Co.* 544.

INTERMEDIATE POINT.

Where an inherently reasonable rate is established by Commission to Spokane, a higher rate to an intermediate point can not be permitted. *City of Spokane v. N. P. Ry. Co.* 162 (169).

INTERMOUNTAIN COUNTRY.

Time has come when carriers west of Rocky Mountains must treat intermountain country upon different basis from that which has hitherto obtained. *R. R. Commission of Nev. v. S. P. Co.* 238 (254).

INVESTIGATIONS.

Demurrage investigation. *In re Demurrage Investigation*, 496.

Investigation being made concerning refrigeration and precooling of citrus-fruit shipments. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (155).

JOBBER.

Jobbers are shippers, and every shipper is entitled to reasonable rates. *Billings Chamber of Commerce v. C., B. & Q. R. R. Co.* 71 (75).

Complaint from middleman, as to blanket rate, dismissed. *Schmidt & Sons v. M. C. R. R. Co.* 535 (538).

JOINT THROUGH RATE. See THROUGH ROUTE AND JOINT RATE.**JUNCTION.**

Junction point, which is less distant and served by additional road, seems entitled to a lower rate. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114 (115).

JURISDICTION.

Supreme Court decisions are binding on Commission. *City of Spokane v. N. P. Ry. Co.* 162 (170); *Fisk & Sons v. B. & M. R. R.* 299 (301).

No jurisdiction over claims barred by section 16. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (594).

No jurisdiction over intrastate shipment. *Wells-Higman Co. v. G. R. & I. Ry. Co.* 487 (490); *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (580).

No doubt of Commission's power to regulate rates upon movement of private equipment. *Chappelle v. L. & N. R. R. Co.* 56 (59). *Id.* 456.

Whether Commission has power to reduce rates for sole reason that revenues are excessive is not decided. *City of Spokane v. N. P. Ry. Co.* 162 (173).

No jurisdiction in Alaska. *In re Jurisdiction in Alaska*, 81; *Humboldt S. S. Co. v. W. P. & Y. Route*, 105.

Commission has complete power to suspend or modify its orders. *Loftus v. Pullman Co.* 102 (104).

Since effective date of Hepburn Act, Commission has had authority to fix rates for the future. *National Hay Asso. v. M. C. R. R. Co.* 34 (37).

Congress left door open to Commission to suspend or modify or set aside any of its orders at any time within the two years. *Id.*

Where classification controls rates, Commission empowered to pass upon such practices affecting rates. *Id.*

Commission's jurisdiction over car-distribution rules is absolute. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (359).

Whether validation of tickets is a practice falling within jurisdiction of Commission not decided. *Riter v. O. S. L. R. R. Co.* 443 (446).

A governmental authority has not the same latitude in fixing blanket rates as carriers themselves. *R. R. Commission of Nev. v. S. P. Co.* 238 (255).

Commission ought to exercise its powers only under clearly expressed authority of the act. *In re Jurisdiction in Alaska*, 81 (93).

No jurisdiction to award damages for decline in market price of a commodity and for commissions for its sale. *Hanley Milling Co. v. P. Co.* 475 (476).

Damages directly resulting from violation of act and measurable by difference in rates may be awarded. *Bowles & McCandless v. L. & N. R. R. Co.* 563 (564).

Commission can not require an express company, which has sold out, to resume business. *Douglas Shoe Co. v. Adams Express Co.* 539 (542).

JURISDICTION—Continued.

Where express service is maintained by single company, Commission can require through rate. *Id.* 539 (543).

While we hold now that Adams Co. ought to accord a 75-cent rate, it is not apparent that we could award damages for failure to do so up to present time. *Id.*

Commission's power to require institution of through routes and joint rates is expressly conditioned upon there being no reasonable or satisfactory through route in existence. *Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co.* 6 (10).

No jurisdiction over jolting, prompt settlement of damage claims, and polite treatment; while as to furnishing loading sheds, clean and dry cars, and stripping and bracing cars there is no allegation of discrimination. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

JURY TRIAL.

Effect of seventh amendment to the Federal Constitution upon actions for damages before Commission not yet determined by courts. (*Dissenting opinion.*) *Hilledale Coal & Coke Co. v. P. R. R. Co.* 356 (384).

LAKE LINE.

Reparation awarded against lake line defendants. *Wyman, Partridge & Co. v. B. & M. R. R.* 551.

LEGAL RATE.

Joint through rate was the legal rate, though there was a lower combination. *Idaho Lime Co. v. A. T. & S. F. Ry. Co.* 139.

Immaterial that shipment moved on strength of misquoted rate. *Newding v. M. K. & T. Ry. Co.* 29.

Two tariff rates on same article; higher rate should not be charged. *Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co.* 65 (67).

Demurrage wrongfully collected where no tariff provisions therefor. *Beekman Lumber Co. v. L. Ry. & N. Co.* 343 (347).

Actual point of origin, and not point from which shipment was billed, determined rate. *Preston v. C. & O. Ry. Co.* 406 (407).

In absence of joint through rate, combination of locals constitutes through rate. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452.

Where tariff provides that ticket must be validated and fixes validation fee, compliance with such tariff is required. *Riter v. O. S. L. R. R. Co.* 443 (444).

Mistake of shipper as to what rate is applicable to his shipment is no basis for reparation. *Running v. C. St. P. M. & O. Ry. Co.* 565.

Shipper is entitled to no rate except that shown in carrier's schedule for the transportation of the commodity as tendered for shipment. *Ford Co. v. M. O. R. R. Co.* 507 (511).

Misquotation of tariff rate is no ground for departure therefrom. *Alabama Lumber & Export Co. v. P. B. & W. R. R. Co.* 295.

Rate advanced while oil was at refining-in-transit point; legal rate is rate in effect at the time of original movement. *Southern Cotton Oil Co. v. A. O. L. R. R. Co.* 434 (435).

A classification named same rate on "pepper" and "chile pepper;" later a commodity rate on "pepper" was established; held such rating did not take "chile pepper" out of classification. *Crombie & Co. v. S. P. Co.* 561.

Almost universal rule is that where a package contains articles taking different rate the entire package goes at rate applicable to highest rated article. *Oak Grove Farm Creamery v. Adams Express Co.* 454 (455).

Where initial carrier's advanced rate tariff did not cancel lower commutation rate named in tariff of another carrier to which initial carrier was a party, lower rate was legal rate. Lawfully established rate remains in force until specifically canceled. *Stilwell v. L. & H. R. Ry. Co.* 404 (405).

LIGHTERAGE.

Lighterage rules, requiring consignees to designate pier and secure berth for unloading, not unreasonable. *Mosson Co. v. P. R. R.* 30.

LIMITATION OF ACTION.

Claim not barred, being filed shortly after disposition of original complaint. *Wyman, Partridge & Co. v. B. & M. R. R.* 551 (552).

No jurisdiction over claims barred by section 16. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (594).

Letter, setting forth precise nature of claim and expense bills showing shipments and amount paid, sufficient to stop running of statute. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114.

Fact that additional charges were later collected did not prevent running of statute from time when payment should have been required. *Shoecraft & Son v. I. C. R. R. Co.* 492.

LOADING AND UNLOADING.

Free unloading at warehouse when road has line haul. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

Rule not unreasonable which compels shippers to count packages of perishable freight. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (521).

Rule requiring consignee to secure berth for unloading is not unreasonable. *Mosson Co. v. P. R. R. Co.* 30.

Duty of loading and unloading carload freight rests on shipper. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397 (401).

Rule that car placed too late for loading will not be counted as available for loading until following day, not unlawful. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (367).

Unloading facilities ample to meet general requirements of community need not, it seems, be enlarged to meet special requirements of single shipper. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290 (292).

LOADING SHED.

Where no discrimination, Commission declined to require carrier to furnish a car shed under which perishable freight could be loaded without damage from weather. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

LOCAL RATE.

Local rate, restricted to industries and team tracks, was no part of combination. *Prahlow v. I. H. B. R. R. Co.* 572 (573).

Rate established by state commission affords little value for comparative purposes. *Waco Freight Bureau v. H. & T. C. R. R. Co.* 22 (26).

Local rates are not to be made with respect to difficulties of each portion of the road. *Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co.* 259 (261).

Through passenger business can be carried at lower rates than strictly local business. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (228).

LOCALITIES.

Abilene, Tex., from New Orleans, La. Bananas, 22.

Adrian, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.

Agra, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.

Alabama points to Boston, Mass., and New York, N. Y., refined in transit at Savannah, Ga. Cottonseed oil, 434.

Alabama points from Mississippi River and Ohio River crossings. Class and commodity rates, 460.

Alaska. In re Jurisdiction over Rail and Water Carriers Operating in Alaska, 81.

Alaska points from Seattle, Wash. Through routes and joint rates, 105.

Alexandria, La., from Le Compt and Cady Switch, La., reconsigned to Omaha, Nebr. Lumber, 12.

LOCALITIES—Continued.

- Alexandria, Mo., from Arkansas points and Malden, Mo. Cooperage, 136.
 Alger, Wyo., from Billings, Mont. Class rates, 71.
 Aliceville, Ala., to Philadelphia, Pa. Cotton linters, 575.
 Allentown, Pa., from Warsaw Junction, Ohio, reconsigned to Perth Amboy, N. J. Hay, 475.
 Alliance, Ohio, from Victoria, Va., via Norfolk, Va. Lumber, 144.
 Almena, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Altoona, Pa., diverted at, en route from Lowell, Fla., to Pittsburg, Pa. Water-melons, 1.
 Altus, Okla., from Saron, Tex. Lumber, 146.
 Americus, Ga., to Jacksonville, Fla. Cottonseed, 136.
 Americus, Ga., to New York, N. Y., refined in transit at Savannah, Ga. Cottonseed oil, 434.
 Anaheim, Cal., to El Paso, Tex. Chile pepper, 561.
 Anniston, Ala., from Springport, Mich. Dried beans, 448.
 Archer, Wyo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Argenta, Kans., from Gleason, Ark. Cypress lumber, 348.
 Arkansas points to Milwaukee, Wis. Empty beer package, 590.
 Arno, Wyo., from Billings, Mont. Class rates, 71.
 Arvada, Wyo., from Billings, Mont. Class rates, 71.
 Ashe, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Ashland, Ohio, from Hertford, N. C. Lumber, 293.
 Asiatic points through Pacific coast ports to Salt Lake City, Provo, and Ogden, Utah. Sago, tapioca, tea and tea dust, 218.
 Atchison, Kans., from Gleason, Ark. Cypress lumber, 348.
 Athens, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Athol, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Atlanta, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Atlanta, Ga., from Mississippi River and Ohio River crossings. Class and commodity rates, 460.
 Atlanta, Ga., to New York, N. Y., refined at Savannah, Ga. Cottonseed oil, 434.
 Atlanta, La., to Detroit, Mich., and Chicago, Ill. Lumber, 343.
 Atlantic seaboard from southern California points. Fruit, 148.
 Atlantic seaboard points to western points. Class and commodity rates, 551.
 Atwood, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Auburn, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Augusta, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Augusta, Ga., to New York, N. Y. Cottonseed oil, 434.
 Austin, Tex., from New Orleans, La. Bananas, 22.
 Bad Axe, Mich., to Tulsa, Okla. Dried beans, 448 (451).
 Bainbridge, Ga., to New York, N. Y., refined in transit at Savannah, Ga. Cottonseed oil, 434.
 Baker City, Oreg., from eastern defined territory. Class and commodity rates, 162.
 Baker City, Oreg., to Mammoth, Utah. Lumber, 582.
 Balcom, Ill., from Traverse City, Mich. Grape or fruit baskets, 487.
 Balzac, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Barnesville, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Barnwell, S. C., to Pawtucket, R. I. Cotton linters, 79.
 Barton, Nebr., from Louisiana, Texas, Arkansas, and Missouri points pine lumber and products, 333.
 Basin, Wyo., from Billings, Mont. Class rates, 71.
 Batchelor, La., from Onalaska, Ark., via Texarkana

LOCALITIES—Continued.

- Bayonne, N. J., from Montgomery, Ala., and Newnan, Ga., refined in transit at Savannah, Ga. Cottonseed oil, 434.
- Beaudette, Minn., to Chicago, Ill., reconsigned in transit to Elsdon, Ill. Lumber, 482.
- Beet Siding (La Salle), Colo., from Nebraska and Iowa points. Lumber, 156.
- Beet-Siding Spur, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Beet Sugar Factory Spur, Colo., from Nebraska points. Lumber, 156.
- Bellaire, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Bellamy, Ala., to Holly Beach, N. J. Lumber, 295.
- Belleville, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Benld, Ill., from Portland, N. Y., reconsigned at Chicago, Ill. Grapes, 452.
- Benson, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
- Bernice, Pa., via Waverly, N. Y., to Binghamton, N. Y. Semianthracite coal, 549.
- Beta, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Bexton, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Billings, Mont., to Wyoming points. Class rates, 71.
- Binghamton, N. Y., from Waverly, N. Y., originating at Bernice, Pa. Semianthracite coal, 549.
- Birmingham, Ala., from Mississippi River and Ohio River crossings. Class and commodity rates, 460.
- Bisbee, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
- Boston, Mass., from Detroit, Mich. Wool, 535.
- Boston, Mass., from Georgia and Alabama points, refined in transit at Savannah, Ga. Cottonseed oil, 434.
- Boston, Mass., from Syracuse, N. Y. Wall plaster, 480.
- Boston, Mass., to points in other States. Cake, 454.
- Boston points from Ohio, Indiana, Illinois, and Michigan points. Hay, 34.
- Box Springs, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Breaux Bridge, La., from Henderson, Colo. Hay, 63.
- Brewster, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Brewton, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Bridges, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Brighton, Ohio, to St. Louis, Mo. Iron drying racks, 477.
- Brinkley, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
- Brockton, Mass., from Martins Creek, Pa. Cement, 297.
- Brockton, Mass., to New York, N. Y. Boots and shoes, 539.
- Brockwayville, Pa., from Rockhouse, Ky. Ties, 406.
- Brownwood, Tex., from New Orleans, La. Bananas, 22.
- Buffalo, N. Y. Transfer charge on motor vehicles, 579.
- Buffalo, N. Y., to Nevada points. Class and commodity rates, 238.
- Buffalo, N. Y., to New York and New England points. Flour and other grain products, 128.
- Buffalo, N. Y., from Philadelphia, Pa., via Manunka Chunk, N. J. Molasses, 68.
- Burke, Idaho, to Carnegie, Pa. Medals, 60.
- Burlington, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Burns, Wyo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Caddo oil field, La., to Galveston, Sabine, and Orange and landings on the Neches and Sabine Rivers, all in Texas, and to Morgan City, La. Oil, 544.
- Cadiz, Wyo., from Billings, Mont. Class rates, 571.
- Cadoma, Wyo., from Nebraska and Iowa points. Lumber, 156.
- Cady Switch, La., to Alexandria, La., reconsigned to Omaha, Nebr. Lumber, 12.

LOCALITIES—Continued.

- Cairo, Ill., via, from Gleason, Ark., to Missouri, Kansas, Illinois, Nebraska, and Iowa points. Cypress lumber, 348.
- Cairo, Ill., to Texarkana, Ark., from Lilly, Pa. Blacksmith coal, 527 (528).
- California points to eastern points. Oranges and lemons, 148.
- California points to Salt Lake City, Provo, and Ogden, Utah. Fruit, 218.
- Calvert, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Calvin, Okla., to De Queen, Ark. Snap corn, 108.
- Camanche, Iowa, from La Salle, Ill. Cement, 492.
- Cambria, Wyo., from Billings, Mont. Class rates, 71.
- Camden, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
- Canton, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Carnegie, Pa., from Coeur d'Alene district, Idaho. Metals, 60.
- Carolina points from Mississippi River and Ohio River crossings. Class and commodity rates, 460.
- Carondelet, Mo., from Petersville, Tex. Scrap iron, 505.
- Casper, Wyo., from Nebraska and Iowa points. Lumber, 156.
- Cecil Junction, Utah, from Sacramento, Cal. Class rates, 259.
- Cedar Gap, Mo., to Minneapolis and St. Paul, Minn. Apples, 114.
- Central Freight Association territory from Omaha, Nebr. Butter, eggs, and poultry, 397.
- Chatham, Wyo., from Billings, Mont. Class rates, 71.
- Chattanooga, Tenn., via Cincinnati, Ohio, to Ionia, Mich. Hickory spokes, 458.
- Chattanooga, Tenn., to Jacksonville, Fla. Cottonseed, 336.
- Cheltenham, Mo., to Chicago, Ill. Enameled brick, 554.
- Cheltenham, Mo., to Tuscaloosa, Ala. Pressed brick, 530.
- Cheyenne, Wyo., from Milwaukee, Wis. Beer, 584.
- Cheyenne, Wyo., from Nebraska and Iowa points. Lumber, 156.
- Chicago, Ill. Unloading vegetables, 3.
- Chicago, Ill., from Atlanta, La. Lumber, 343.
- Chicago, Ill., from Beaudette, Minn., reconsigned to Elsdon, Ill. Lumber, 482.
- Chicago, Ill., from Cheltenham, Mo. Enameled brick, 554.
- Chicago, Ill., from Dongola, Ill., rebilled to Paw Paw, Mich. Fruit baskets, 487 (490).
- Chicago, Ill., reconsigned to, en route from Dothan, Ala., to Roodhouse, Ill. Lumber, 482 (484).
- Chicago, Ill., to Durham and Winston-Salem, N. C. Grain and products, hay, and packing-house products, 303.
- Chicago, Ill., from Metropolis, Ill., rebilled to Lawton, Mich. Grape baskets, 487 (489).
- Chicago, Ill., to Nevada points. Class and commodity rates, 238.
- Chicago, Ill., from Philadelphia, Pa. Cotton shoddy lining, 512.
- Chicago, Ill., to Phoenix, Ariz. Class rates, 257.
- Chicago, Ill., from Ponchatoula, La. Fruit and vegetables, 513.
- Chicago, Ill., from Portland, N. Y., reconsigned to Livingston, Ill., and Benld, Ill. Grapes, 452.
- Chicago, Ill., from St. Paul, Minn. Sleeping-car rates, 102.
- Chicago, Ill., from St. Rose, La., via Kenner, La. Cabbage, 3.
- Chicago, Ill., to Spokane points. Class and commodity rates, 162.
- Chicago, Ill., to and from Utah points. Class and commodity rates, 218.
- Chicago, Ill., from West Virginia-Pennsylvania ovens. Coke, 592.
- Cincinnati, Ohio, to Durham and Winston-Salem, N. C. Grain, grain products, hay, and packing-house products, 303.
- Cincinnati, Ohio, from Durham and Winston-Salem, N. C. Lumber, 303.

LOCALITIES—Continued.

- Cincinnati, Ohio, en route from Fort Payne, Ala., and Chattanooga, Tenn., to Ionia, Mich. Hickory spokes, 458.
- Cincinnati, Ohio, to Phoenix, Ariz. Class and commodity rates, 257.
- Cincinnati, Ohio, to Winston-Salem and Durham, N. C. Class rates, 303.
- Cincinnati-Detroit group to Nevada points. Class and commodity rates, 238.
- Clarendon, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
- Clarks, La., to Nebraska points. Yellow-pine lumber and products, 333.
- Clayton, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Clayton, N. Mex., from Milwaukee, Wis. Beer, 584.
- Clearmont, Wyo., from Billings, Mont. Class rates, 71.
- Cliffs, Ariz., to Arizona points. Lumber, 119.
- Clinton, Iowa, from La Salle, Ill. Cement, 492.
- Clinton, Iowa, group to Nevada points. Class and commodity rates, 238.
- Cody, Wyo., from Billings, Mont. Class rates, 71.
- Coeur d'Alene district, Idaho, to Carnegie, Pa. Metals, 60.
- Coffeyville, Kans., to Gleason, Ark. Cypress lumber, 348.
- Colby, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Colorado City, Colo., from Milwaukee, Wis. Beer, 584.
- Colorado points to Salina, Kans. Coal, 20.
- Colter, Wyo., from Billings, Mont. Class rates, 71.
- Columbia, Ala., to Jacksonville, Fla. Cottonseed, 336.
- Columbia, Tenn., from Louisville, Ky. Sheep, 562.
- Columbus, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Columbus, Ohio, to Durham and Winston-Salem, N. C. Grain, grain products, hay, and packing-house products, and lumber, 303.
- Como, Wyo., from Billings, Mont. Class rates, 71.
- Connecticut points from Omaha, Nebr. Dairy products, 397.
- Cooper, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Corbett, Wyo., from Billings, Mont. Class rates, 71.
- Corsicana, Tex., from New Orleans, La. Bananas, 22.
- Council Bluffs, Iowa, from Gleason, Ark. Cypress lumber, 348.
- Council Bluffs, Iowa, to South Dakota, Colorado, Kansas, and Wyoming points. Lumber, 156.
- Courtland, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Covington, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Cowley, Wyo., from Billings, Mont. Class rates, 71.
- Cravens, La., to Nebraska points. Yellow-pine lumber and products, 333.
- Crook, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Croton, Wyo., from Billings, Mont. Class rates, 71.
- Crowell, Tex., from Monroe, La. Shingles, 117.
- Cuthbert, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Dallas, S. Dak., from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Lumber, 156.
- Dallas, Tex., from New Orleans, La. Bananas, 22.
- Danville, Ill., from Plymouth, Wis. Cheese, 493.
- Davisville, Tex., to Santa Rita, N. Mex. Lumber, 146.
- Dawson, Ga., to New York, N. Y., refined in transit at Savannah, Ga. Cottonseed oil, 434.
- De Queen, Ark., from Calvin, Okla. Snap corn, 108.
- Delaware points from Omaha, Nebr. Dairy products, 397.
- Dellvale, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Denver, Colo., from Milwaukee, Wis. Beer, 584.
- Denver, Colo., group to Nevada points. Class and commodity rates, 238.

LOCALITIES—Continued.

- Detroit, Mich., from Atlanta, La. Lumber, 343.
 Detroit, Mich., to Boston, Mass. Wool, 535.
 Detroit, Mich., territory to Spokane points. Class and commodity rates, 162.
 Diboll, Tex., to Nebraska points. Yellow-pine lumber and products, 333.
 District of Columbia points to Omaha, Nebr. Dairy products, 397.
 Dodd, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Donegal, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Dongola, Ill., to Chicago or Riverdale, Ill., rebilled to Paw Paw, Mich. Fruit baskets, 487 (490).
 Dothan, Ala., to Pittsburg, Pa., refined at Savannah, Ga. Cottonseed oil, 434.
 Dothan, Ala., to Roodhouse, Ill., reconsigned to Chicago, Ill. Lumber, 482 (484).
 Douglas, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
 Dover, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Draughton, Ark., to Nebraska points. Yellow-pine lumber and products, 333.
 Dresden, Kans., from Omaha and South Omaha, Nebr., Lumber, 156.
 Dublin, Ga., to New York, N. Y., refined at Savannah, Ga., Cottonseed oil, 434.
 Dublin, Tex., from New Orleans, La. Bananas, 22.
 Durham, N. C., from Illinois, Kentucky, and Ohio points. Grain, grain products, hay, and packing-house products, 303.
 Durham, N. C., from Pocahontas fields. Coal, 303.
 Durham, N. C., from Virginia and Ohio points. Class rates, 303.
 Durham, Wyo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Dyersburg, Tenn. Grain. Substitution of tonnage, 567.
 East St. Louis, Ill. Hay. Reconsignment, 533.
 East St. Louis, Ill., to Durham and Winston-Salem, N. C. Grain, grain products, hay, and packing-house products, 303.
 East St. Louis, Ill., to Omaha and South Omaha, Nebr. Soft coal, 598.
 East St. Louis, Ill., to Roodhouse, Ill. Lumber, 482 (483).
 East St. Louis, Ill., from Southport, La. Ties, 314.
 Eastern defined territory to Spokane points. Class and commodity rates, 162.
 Eastern points from St. Paul and Minneapolis, Minn. Butter and eggs, 285.
 Eastern points to San Pedro, Cal. Class and commodity rates, 323.
 Eastern points from Southern California points. Oranges and lemons, 148.
 Edson, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Egbert, Wyo., from Omaha and South Omaha, Nebr. Lumber, 156.
 El Paso, Tex., from California points. Chile pepper, 561.
 Elko, Nev., from eastern points. Class and commodity rates, 238.
 Elko, Nev., to San Francisco, Cal., and return. Round-trip tickets, 503.
 Elsdon, Ill., reconsigned to, en route from Beaudette, Minn., to Chicago, Ill. Lumber, 482.
 Esbon, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Escanaba, Mich., from Milwaukee, Wis. Beer, 588.
 Eufaula, Ala., to Jacksonville, Fla. Cottonseed, 336.
 Eunice, La., from Orange, Tex., Mixed groceries, 502.
 Everett, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Fargo, N. Dak., from St. Paul, Minn. Sleeping-car rates, 102.
 Felix, Wyo., from Billings, Mont., Class rates, 71.
 Fisher, La., to Nebraska points. Yellow-pine lumber and products, 333.
 Flagstaff, Ariz., to Arizona points. Lumber, 119.
 Florida points from Mississippi River and Ohio River crossings. Class and commodity rates, 460.
 Fond du Lac, Wis., from Kalamazoo, Mich. Cutters, 15.
 Ford, Colo., from Omaha and South Omaha, Nebr. Lumber, 156,

LOCALITIES—Continued.

- Fordyce, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
 Formoso, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Fort Gaines, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Fort Laramie, Wyo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Fort Morgan, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Fort Payne, Ala., via Cincinnati, Ohio, to Ionia, Mich. Hickory spokes, 458.
 Fort Scott, Kans., to Gleason, Ark. Cypress lumber, 348.
 Fort Smith, Ark., from South Park, Ohio, via St. Louis, Mo. Brick, 530 (532).
 Fort Valley, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Fort Worth, Tex., from New Orleans, La. Bananas, 22.
 Fort Worth, Tex., from Pine Bluff, Ark. Box shooks, 141.
 Frannie and Frannie Junction, Wyo., from Billings, Mont. Class rates, 71.
 Galveston, Tex., from Caddo oil field, Louisiana. Oil, 544.
 Garland, Wyo., from Billings, Mont., Class rates, 71.
 Gem, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Georgia points to Boston, Mass., and New York, N. Y., refined in transit at Savannah, Ga. Cottonseed oil, 434.
 Georgia points to Jacksonville, Fla. Cottonseed, 336.
 Georgia points from Mississippi and Ohio River crossings. Class and commodity rates, 460.
 Gillette, Wyo., from Billings, Mont., Class rates, 71.
 Gladstone, Mich., from Milwaukee, Wis. Beer, 588.
 Gleason, Ark., to Missouri, Kansas, Illinois, Nebraska, and Iowa points. Cypress lumber, 348.
 Glen Alta, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Glen Campbell, Pa. Coal-car distribution, 356.
 Globe, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
 Goldfield, Nev., to Omaha, Nebr. Validation of limited excursion tickets, 440.
 Goodland, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Goodrich, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Gordon, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Gothenburg, Nebr., from Milwaukee, Wis. Beer, 584.
 Grand Island, Nebr., group to Reno, Winnemucca, and other Nevada points. Class and commodity rates, 238.
 Grandin, Mo., to Nebraska points. Yellow-pine lumber and products, 333.
 Greenville, Tex., from New Orleans, La. Bananas, 22.
 Greenville, Mo., to Roodhouse, Ill., via East St. Louis, Ill. Lumber, 482 (483).
 Gretna, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Greybull, Wyo., from Billings, Mont., Class rates, 71.
 Griffin, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Guernsey, Wyo., from Nebraska and Iowa points. Lumber, 156.
 Hall, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Hardin, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Harrisburg, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
 Hayford, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Henderson, Colo., to Breau Bridge, La. Hay, 63.
 Hertford, N. C., to Ashland, Ohio. Lumber, 293.
 Hillsdale, Wyo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Holly Beach, N. J., from Bellamy, Ala. Lumber, 295.
 Holyoke, Mass., from Pennsylvania fields. Coal, 299.
 Houston, Tex., from Lewiston, N. Y. Cabbages, 78.
 Huntington, W. Va., from Marrowbone, Ky. Ties, 406.

LOCALITIES—Continued.

- Idaho points to Carnegie, Pa. Metals, 60.
 Idaho points from Seattle and Tacoma, Wash., and Portland, Oreg. Class rates, 265.
 Iliff, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Illinois points from Gleason, Ark. Cypress lumber, 348.
 Illinois points to Philadelphia, New York, and Boston points. Hay, 34.
 Indiana points from Omaha, Nebr. Dairy products, 397.
 Indiana points to Philadelphia, New York, and Boston points. Hay, 34.
 Ionia, Mich., from Fort Payne, Ala., and Chattanooga, Tenn., via Cincinnati, Ohio.
 Hickory spokes, 458.
 Iowa points from Gleason, Ark. Cypress lumber, 348.
 Iowa points to Omaha, Nebr. Grain, 424.
 Ironton, Wyo., from Nebraska and Iowa points. Lumber, 156.
 Ivey, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Ivorydale, Ohio. Demurrage on private cars, 556.
 Jacksonville, Fla., from Georgia, Alabama, Tennessee, and South Carolina points.
 Cottonseed and cottonseed oil, 336.
 Jennings, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Jerome, Wyo., from Billings, Mont. Class rates, 71.
 Joplin, Mo., to Gleason, Ark. Cypress lumber, 348.
 Jonesboro, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
 Jonesboro, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Josselyn, Nebr., from Louisiana, Texas, Arkansas and Missouri points. Yellow-
 pine lumber and products, 333.
 Julesburg, Colo., from Nebraska and Iowa points. Lumber, 156.
 Kalamazoo, Mich., to Fond du Lac, Wis. Cutters, 15.
 Kalamazoo, Mich., from Moline, Ill. Buggy bodies, 15.
 Kane, Wyo., from Billings, Mont. Class rates, 71.
 Kanorado, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Kansas City, Kans. Demurrage on private cars, 556.
 Kansas City, Mo., from Gleason, Ark. Cypress lumber, 348.
 Kansas City, Mo., to Phoenix, Ariz. Class and commodity rates, 257.
 Kansas points from Gleason, Ark. Cypress lumber, 348.
 Kansas points from Walsenburg district, Colo. Bituminous coal, 478.
 Kansas points from Walsenburg district, Colo. Coal, 20.
 Kelvin, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
 Kenner, La., en route from St. Rose, La., to Chicago, Ill. Cabbage, 3.
 Kensington, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Keokuk, Iowa, from Arkansas points and Malden, Mo. Cooperage, 136.
 Kersey, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Kirby, Wyo., from Billings, Mont. Class rates, 71.
 Kuner, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 La Crosse, Ga., to Jacksonville, Fla. Cottonseed, 336.
 La Grande, Oreg., from eastern defined territory. Class and commodity rates, 162.
 La Salle (Beet Siding), Colo., from Nebraska and Iowa points. Lumber, 156.
 La Salle, Ill., to Clinton and Camanche, Iowa. Cement, 492.
 Lander, Wyo., from Nebraska and Iowa points. Lumber, 156.
 Lariat, Wyo., from Billings, Mont. Class rates, 71.
 Larson, Idaho, to Carnegie, Pa. Metals, 60.
 Lawton, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Lawton, Mich., rebilled to, from Metropolis, Ill., to Chicago, Ill. Grape baskets,
 487 (489).
 rpt, La., to Alexandria, La., reconsigned to Omaha, Nebr. Lumber, 12.
 lle, Colo., from St. Louis, Mo., via Pueblo, Colo. Beer, 18.

LOCALITIES—Continued.

- Leavenworth, Kans., from Gleason, Ark. Cypress lumber, 348.
 Lebanon, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Leger, Okla., from Saron, Tex. Lumber, 146.
 Lemmon, S. Dak., from Minneapolis, Minn. Compo-board, 110.
 Levant, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Lewiston, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Lewiston, N. Y., to Houston, Tex. Cabbage, 78.
 Lilly, Pa., via Cairo, Ill., to Texarkana, Ark. Blacksmith coal, 527 (528).
 Lincoln, Nebr., from Gleason, Ark. Cypress lumber, 348.
 Little Rock, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
 Livingston, Ill., from Portland, N. Y., reconsigned at Chicago, Ill. Grapes, 452.
 Longville, La., to Nebraska points. Yellow-pine lumber and products, 333.
 Lorane, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Loring, La., to Nebraska points. Yellow-pine lumber and products, 333.
 Los Angeles, Cal., to El Paso, Tex. Chile pepper, 561.
 Los Angeles, Cal., to and from Utah points. Passenger rates, 218.
 Louisiana (Caddo) oil field to Texas and Louisiana points. Oil, 544.
 Louisiana points to Milwaukee, Wis. Empty beer packages, 590.
 Louisville, Ky., to Columbia, Tenn. Sheep, 563.
 Louisville, Ky., to Durham and Winston-Salem, N. C. Grain, grain products, hay, and packing-house products, 303.
 Lovell, Wyo., from Billings, Mont. Class rates, 71.
 Lowell, Fla., to Pittsburg, Pa., diverted at Altoona, Pa. Watermelons, 1.
 Lynchburg, Va., to Winston-Salem and Durham, N. C. Class rates, 303.
 Macon, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Mahaska, Kans., from Omaha and South Omaha, Nebr., and Council Bluffs, Iowa. Lumber, 156.
 Maine points from Omaha, Nebr. Dairy products, 397.
 Malden, Mo., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
 Malvern, Ark., to Nebraska points. Yellow-pine lumber and products, 333.
 Mammoth, Utah, from Baker City, Oreg. Lumber, 582.
 Manderson, Wyo., from Billings, Mont. Class rates, 71.
 Manistique, Mich., from St. Paul and Minneapolis, Minn. Butter and eggs, 235.
 Mankato, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Mantua, Wyo., from Billings, Mont. Class rates, 71.
 Manunka Chunk, N. J., en route from Philadelphia, Pa., to Buffalo, N. Y. Molasses, 68.
 Marrowbone, Ky., to Huntington, W. Va., and from Rockhouse, Ky. Ties, 406.
 Martins Creek, Pa., to Brockton, Mass. Cement, 297.
 Massachusetts points from Omaha, Nebr. Dairy products, 397.
 Masters, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Mechanicsville, N. Y., en route from Pennsylvania fields to Holyoke, Mass. Anthracite coal, 299.
 Medicine Lodge, Kans., to Spokane, Wash. Cement, 139.
 Menomonie Junction, Wis., to St. Paul, Minn. Strawberries, 565.
 Merino, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Mesa, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
 Messex, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Metropolis, Ill., to Chicago, Ill., rebilled to Lawton, Mich. Grape baskets, 487 (489).
 Michigan points from Omaha, Nebr. Dairy products, 397.
 Michigan points to Philadelphia, New York, and Boston points, 34.
 Millen, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Milwaukee, Wis. Free delivery of express packages, 112.

LOCALITIES—Continued.

- Milwaukee, Wis., to California, Nebraska, Wyoming, New Mexico, and Colorado points. Beer, 584.
- Milwaukee, Wis., to Gladstone and Escanaba, Mich. Beer, 588.
- Milwaukee, Wis., from Texas, Louisiana, and Arkansas points. Empty beer packages, 590.
- Minneapolis, Minn., to Lemmon, S. Dak. Compo-board, 110.
- Minneapolis, Minn., to Manistique, Mich., destined to eastern points. Butter and eggs, 285.
- Minneapolis, Minn., from Seymour and Cedar Gap, Mo. Apples, 114.
- Minnesota points to Omaha, Nebr. Grain, 424.
- Minturn, Wyo., from Billings, Mont. Class rates, 71.
- Mississippi points to New Orleans, La. Ties, 314.
- Mississippi River to Utah points. Commodity rates, 218.
- Mississippi River to and from Utah points. Class rates, 218.
- Mississippi River crossings to Georgia, Alabama, Florida, and Carolina points. Class and commodity rates, 460.
- Mississippi River crossings from Gleason, Ark. Cypress lumber, 348.
- Mississippi River territory to Spokane points. Class and commodity rates, 162.
- Missouri River territory to Spokane points. Class and commodity rates, 162.
- Missouri River to Salt Lake City, Provo, and Ogden, Utah. Commodity rates, 218.
- Missouri River to and from Salt Lake City, Provo, and Ogden, Utah. Class rates, 218.
- Missouri River from Salina, Kans. Coal, 20.
- Missouri River and intermediate points from New Delhi, Cal. Sugar, 6.
- Missouri River points and points west thereof from Gleason, Ark. Cypress lumber, 348.
- Missouri River points to Phoenix, Ariz. Class rate, 257.
- Moline, Ill., to Kalamazoo, Mich. Buggy bodies, 15.
- Monroe, La., to Crowell, Tex. Shingles, 117.
- Montana points to Seattle and Tacoma, Wash., and Portland, Oreg. Class rates, 266.
- Montgomery, Ala., to northern points, refined in transit at Savannah, Ga. Cottonseed oil, 434.
- Montrose, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Moorcraft, Wyo., from Billings, Mont. Class rates, 71.
- Morgan City, La., from Caddo oil field, La. Oil, 544.
- Mullan, Idaho, to Carnegie, Pa. Metals, 60.
- Munden, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Muskogee, Okla., to New Orleans, La. Petroleum, 132.
- Naco, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
- Nankipoo, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Narka, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Narrows, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Nebraska points from Gleason, Ark. Cypress lumber, 348.
- Nebraska points from Walsenburg district, southern Colorado. Bituminous coal, 478.
- Neches River, Tex. (landings on), from Caddo oil fields, La. Oil, 544.
- Neiber, Wyo., from Billings, Mont. Class rates, 71.
- Nevada points from eastern points. Class and commodity rates, 238.
- New Delhi, Cal., to Missouri River and intermediate points. Sugar, 6.
- New England points. Demurrage investigation and extension of free time on certain commodities, 496.
- New England points from Buffalo, N. Y. Flour and other grain products, 128.
- New Hampshire points from Omaha, Nebr. Dairy products, 397.
- New Mexico-Arizona territory. Exchange scrip book, 499.
- New Orleans, La., from Mississippi points. Ties, 314.

LOCALITIES—Continued.

- New Orleans, La., from Muskogee, Okla. Petroleum, 132.
 New Orleans, La., to Texas common points. Bananas, 22.
 New York, N. Y., from Brockton, Mass. Boots and shoes, 539.
 New York, N. Y., from Georgia and Alabama points, refined in transit at Savannah, Ga. Cottonseed oil, 434.
 New York, N. Y., from Ohio, Indiana, Illinois, and Michigan points. Hay, 34.
 New York, N. Y., from St. Paul, Minn. Furs, 354.
 New York, N. Y., from Syracuse, N. Y. Wall plaster, 480.
 New York, N. Y., to and from Warwick, N. Y. Commutation tickets, 404.
 New York common points to Nevada points. Class and commodity rates, 238.
 New York Harbor points. Lumber. Lighterage rules, 30.
 New York points from Buffalo, N. Y. Flour and other grain products, 128.
 New York points from Omaha, Nebr. Dairy products, 397.
 New York territory to Spokane. Class and commodity rates, 162.
 Newcastle, Wyo., from Billings, Mont. Class rates, 71.
 Newnan, Ga., to northern points, refined in transit at Savannah, Ga. Cottonseed oil, 434.
 Newport, Tenn. Lumber. Milling in transit privilege, 522.
 Norfolk, Va., en route from Victoria, Va., to Alliance, Ohio. Lumber, 144.
 Norfolk Junction, Nebr., from Nebraska and Iowa points. Lumber, 156.
 North Adams, Mass., to Sikeston, Mo., via St. Louis, Mo. Shoes, 422.
 Norton, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Oakdale, La., to Port Arthur, Tex. Lumber, 50.
 Oakland, Cal., from Milwaukee, Wis. Beer, 584.
 Official Classification territory. Hay, 34.
 Official Classification territory. Wyandotte Cleaner and Cleanser, 507.
 Ogden, Utah, from Asiatic points through Pacific coast ports. Sago, tapioca, tea, and tea dust, 218.
 Ogden, Utah, from Chicago, Ill., Mississippi River and Missouri River. Commodity rates, 218.
 Ogden, Utah, to and from Chicago, Ill., Mississippi River and Missouri River. Class rates, 218.
 Ogden, Utah, to and from Los Angeles and San Francisco, Cal. Passenger rates, 218.
 Ogden, Utah, from Omaha, Nebr., en route from Thomas, W. Va., to Tonopah, Nev. Soft coal, 527.
 Ohio points from Omaha, Nebr. Dairy products, 397.
 Ohio points to Philadelphia, New York, and Boston points. Hay, 34.
 Ohio River crossings to Georgia, Alabama, Florida, and Carolina points. Class and commodity rates, 460.
 Ohio River crossings from Gleason, Ark. Cypress lumber, 348.
 Omaha, Nebr., to Central Freight Association territory. Dairy products, 397.
 Omaha, Nebr., from East St. Louis, Ill. Soft coal, 598.
 Omaha, Nebr., from Gleason, Ark. Cypress lumber, 348.
 Omaha, Nebr., from Goldfield, Nev. Validation of limited excursion ticket, 440.
 Omaha, Nebr., reconsigned to; Lecompt and Cady Switch, La., to Alexandria, La. Lumber, 12.
 Omaha, Nebr., to Ogden, Utah, en route from Thomas, W. Va., to Tonopah, Nev. Soft coal, 527.
 Omaha, Nebr., to South Dakota, Colorado, Kansas, and Wyoming points. Lumber, 156.
 Omaha, Nebr., from South Dakota, Minnesota, and Iowa points. Grain, 424.
 Omaha, Nebr., group to Nevada points. Class and commodity rates, 238.
 Onalaska, Ark., via Texarkana, Ark., to Batchelor, La. Railway equipment, 54.

LOCALITIES—Continued.

- Orange, Tex., from Caddo oil field, La. Oil, 544.
 Orange, Tex., to Eunice, La. Mixed groceries, 502.
 Orangeburg, S. C., to Jacksonville, Fla. Cottonseed oil, 336.
 Orchard, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Oregon points from Washington and Oregon points. Class rates, 265.
 Oriva, Wyo., from Billings, Mont. Class rates, 71.
 Osage, Wyo., from Billings, Mont. Class rates, 71.
 Otego, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Ovid, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Oxford Junction, Nebr., from Louisiana, Texas, Arkansas, and Missouri points.
 Yellow-pine lumber and products, 333.
 Pacific ports, en route, from Asiatic points to Salt Lake City, Provo, and Ogden, Utah. Sago, tapioca, tea and tea dust, 218.
 Paragould, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
 Paris, Tex., from New Orleans, La. Bananas, 22.
 Parkman, Wyo., from Billings, Mont. Class rates, 71.
 Pate, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Paw Paw, Mich., rebilled to; Dongola, Ill., to Chicago or Riverdale, Ill. Fruit baskets, 487 (490).
 Pawtucket, R. I., from Barnwell, S. C. Cotton linters, 79.
 Pedro, Wyo., from Billings, Mont. Class rates, 71.
 Pendleton, Oreg., from eastern defined territory. Class and commodity rates, 162.
 Pennsylvania fields through Rotterdam Junction, Troy, and Mechanicsville, N. Y., to Holyoke, Mass. Anthracite coal, 299.
 Pennsylvania points from Omaha, Nebr. Dairy products, 397.
 Perry, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Perth Amboy, N. J., reconsigned to, while en route from Warsaw Junction, Ohio, to Allentown, Pa. Hay, 475.
 Petersville, Tex., to Carondelet, Mo. Scrap iron, 505.
 Philadelphia, Pa., from Aliceville, Ala. Cotton linters, 575.
 Philadelphia, Pa., to Chicago, Ill. Cotton shoddy lining, 512.
 Philadelphia, Pa., via Manunka Chunk, N. J., to Buffalo, N. Y. Molasses, 68.
 Philadelphia, Pa., from Ohio, Indiana, Illinois, and Michigan points. Hay, 34.
 Phillipsburg, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Phoenix, Ariz., from eastern defined territory. Class and commodity rates, 257.
 Phoenix, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
 Pickering, La., to Nebraska points. Yellow-pine lumber and products, 333.
 Pine Bluff, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
 Pine Bluff, Ark., to Fort Worth, Tex. Box shooks, 141.
 Pittsburg, Pa., from Dothan, Ala., refined in transit at Savannah, Ga. Cottonseed oil, 434.
 Pittsburg, Pa., from Lowell, Fla., diverted at Altoona, Pa. Watermelons, 1.
 Pittsburg, Pa., to Phoenix, Ariz. Class and commodity rates, 257.
 Pittsburg-Detroit common points to Nevada points. Class and commodity rates, 238.
 Pittsburg territory to Spokane points. Class and commodity rates, 162.
 Plymouth, Wis., to Danville, Ill. Cheese, 493.
 Pocahontas field to Durham and Winston-Salem, N. C. Coal, 303.
 Ponchatoula, La., to Chicago, Ill. Fruit and vegetables, 513.
 Porterdale, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Port Arthur, Tex., from Oakdale, La. Lumber, 50.
 Port Ivory, N. Y. Demurrage on private cars, 556.
 Portland, N. Y., to Chicago, Ill., reconsigned to Livingston, Ill., and Benld, Ill. Grapes, 452.

LOCALITIES—Continued.

- Portland, Oreg., to Washington, Oregon, Idaho, and Montana points. Class rates, 265.
- Powell, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Prairie View, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Proctor, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Provo, Utah, from Asiatic points through Pacific coast ports. Sago, tapioca, tea, and tea dust, 218.
- Provo, Utah, from Chicago, Mississippi River, and Missouri River. Commodity rates, 218.
- Provo, Utah, to and from Chicago, Mississippi River, and Missouri River. Class rates, 218.
- Provo, Utah, to Los Angeles and San Francisco, Cal. Passenger rates, 218.
- Pueblo, Colo., from Milwaukee, Wis. Beer, 584.
- Pueblo, Colo., en route from St. Louis, Mo., to Leadville, Colo. Beer, 18.
- Rairden, Wyo., from Billings, Mont. Class rates, 71.
- Ralston, Wyo., from Billings, Mont. Class rates, 71.
- Ralton, Nebr., from Louisiana, Texas, Arkansas, and Missouri points. Yellow-pine lumber and products, 333.
- Ranchester, Wyo., from Billings, Mont. Class rates, 71.
- Raymond, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Red Lion, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Red Rock, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
- Regis, Wyo., from Billings, Mont. Class rates, 71.
- Reno, Nev., from eastern points. Class and commodity rates, 238.
- Reno, Nev., en route from Elko, Nev., to San Francisco, Cal., and return. Round-trip ticket, 503.
- Reno, Nev., from Sacramento, Cal. Class rates, 259.
- Rexford, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Rhode Island points from Omaha, Nebr. Dairy products, 397.
- Riverdale, Ill., from Dongola, Ill., rebilled to Paw Paw, Mich. Fruit baskets, 487 (490).
- Riverdale, Ill., from Metropolis, Ill., rebilled to Lawton, Mich. Grape baskets, 487 (489).
- Roanoke, Va., to Winston-Salem and Durham, N. C. Class rates, 303.
- Rock Springs, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Rockhouse, Ky., to Brockwayville, Pa. Ties, 406.
- Roodhouse, Ill., from Dothan, Ala., reconsigned to Chicago, Ill. Lumber, 482 (484).
- Roodhouse, Ill., from Greenville, Mo., via East St. Louis, Ill. Lumber, 482 (483).
- Roswell, Colo., from Nebraska and Iowa points. Lumber, 156.
- Rotterdam, N. Y., en route from Pennsylvania fields to Holyoke, Mass. Anthracite coal, 299.
- Rozett, Wyo., from Billings, Mont. Class rates, 71.
- Ruleton, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Rydal, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Sabine, Tex., from Caddo oil field, La. Oil, 544.
- Sabine River, Tex. (landings on), from Caddo oil field, La. Oil, 544.
- Sacramento, Cal., to Nevada and Utah points. Class rates, 259.
- St. Joseph, Mo., from Gleason, Ark. Cypress lumber, 348.
- St. Louis, Mo., from Brighton, Ohio. Iron drying racks, 577.
- St. Louis, Mo., to Fort Smith, Ark.; from South Park, Ohio. Brick, 530 (532).
- St. Louis, Mo., from Gleason, Ark. Cypress lumber, 348.
- St. Louis, Mo., en route from North Adams, Mass., to Sikeston, Mo. Shoes, 422.
- St. Louis, Mo., to Phoenix, Ariz. Class and commodity rates, 257.

LOCALITIES—Continued.

- St. Louis, Mo., via Pueblo, Colo., to Leadville, Colo. Beer, 18.
 St. Louis, Mo., to San Antonio, Tex. Beer bottles, 29.
 St. Paul, Minn., to Chicago., Ill., Fargo and Grand Forks, N. Dak., Seattle, Wash., and Superior, Wis. Sleeping-car rates, 102.
 St. Paul, Minn., to Manistique, Mich., destined to eastern points. Butter and eggs, 285.
 St. Paul, Minn., from Menomonie Junction, Wis. Strawberries, 565.
 St. Paul, Minn., to New York, N. Y. Raw furs, 354.
 St. Paul, Minn., from Seymour and Cedar Gap, Mo. Apples, 114.
 St. Paul, Minn., to Spokane points. Class and commodity rates, 162.
 St. Rose, La., via Kenner, La., to Chicago, Ill. Cabbage, 3.
 Salt Lake City, Utah, from Asiatic points through Pacific coast ports. Sago, tapioca, tea and tea dust, 218.
 Salt Lake City, Utah, to and from California points. Passenger rates, 218.
 Salt Lake City, Utah, from Chicago, Mississippi River, and Missouri River. Commodity rates, 218.
 Salt Lake City, Utah, to and from Chicago, Mississippi River, and Missouri River. Class rates, 218.
 Salt Lake City, Utah, to San Francisco, Cal. Validation of ticket, 443.
 San Antonio, Tex., from New Orleans, La. Bananas, 22.
 San Antonio, Tex., from St. Louis, Mo. Beer bottles, 29.
 San Francisco, Cal., to El Paso, Tex. Chile pepper, 561.
 San Francisco, Cal., from Elko, Nev., via Reno, Nev., and return. Round-trip tickets, 503.
 San Francisco, Cal., from Milwaukee, Wis. Beer, 584.
 San Francisco, Cal., from Salt Lake City, Utah. Validation of tickets, 443.
 San Francisco, Cal., from Steubenville, Ohio. Grates and fireplaces, 65.
 San Francisco, Cal., to and from Utah points. Passenger rates, 218.
 San Pedro, Cal., from eastern points. Class and commodity rates, 323.
 Sanborn, Nebr., from Louisiana, Texas, Arkansas, and Missouri points. Yellow-pine lumber and products, 333.
 Sand Pit Spur, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Santa Rita, N. Mex., from Davisville, Tex. Lumber, 156.
 Saron, Tex., to Altus, Okla. Lumber, 146.
 Savannah, Ga., refining point en route from Georgia and Alabama points to northern points. Cottonseed oil, 434.
 Savannah, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Scandia, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Seattle, Wash., to Alaska points. Through route and joint rate, 105.
 Seattle, Wash., from St. Paul, Minn. Sleeping-car rates, 102.
 Seattle, Wash., to Washington, Oregon, Idaho, and Montana points. Class rates, 265.
 Sedgwick, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Selden, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
 Seymour, Mo., to Minneapolis and St. Paul, Minn. Apples, 114.
 Sheridan, Wyo., from Billings, Mont. Class rates, 71.
 Shirley, Ind., from Tennessee Ridge, Tenn. Ties, 438.
 Sikeston, Mo., from North Adams, Mass., via St. Louis, Mo. Shoes, 422.
 Skagway, Alaska. Wharf facilities, 105.
 Smeed, Nebr., from Louisiana, Texas, Arkansas, and Missouri points. Yellow-pine lumber and products, 333.
 Smith Center, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.

LOCALITIES—Continued.

- Smithfield, Nebr., from Louisiana, Texas, Arkansas, and Missouri points. Yellow-pine lumber and products, 333.
- Smithville, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Smoke Run, Pa. Coal-car distribution, 392.
- Snyder, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- South Carolina points to Jacksonville, Fla. Cottonseed oil, 336.
- South Chicago, Ill., from Wolf Lake, Ind. Ice, 572.
- South Dakota points to Omaha, Nebr. Grain, 424.
- South Omaha, Nebr., from East St. Louis, Ill. Soft coal, 598.
- South Omaha, Nebr., to South Dakota, Colorado, Kansas, and Wyoming points. Lumber, 156.
- South Park, Ohio, via St. Louis, Mo., to Fort Smith, Ark. Brick, 530 (532).
- Southern California points to eastern points. Oranges and lemons, 148.
- Southport, La., to East St. Louis, Ill. Ties, 314.
- Sparta, Wyo., from Billings, Mont. Class rates, 71.
- Spence, Wyo., from Billings, Mont. Class rates, 71.
- Spokane, Wash., from eastern defined territory. Class and commodity rates, 162.
- Spokane, Wash., from Medicine Lodge, Kans. Cement, 139.
- Springport, Mich., to Anniston, Ala. Dried beans, 448.
- Standard, La., to Nebraska points. Yellow-pine lumber and products, 333.
- Stephens, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
- Sterling, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Steubenville, Ohio, to San Francisco, Cal. Grates and fireplaces, 65.
- Stuttgart, Kans., from Omaha and South Omaha, Nebr. Lumber, 156.
- Sublette, Colo., from Omaha and South Omaha, Nebr. Lumber, 156.
- Sumter, S. C., to Jacksonville, Fla. Cottonseed oil, 336.
- Sunset, Idaho, to Carnegie, Pa. Metals, 60.
- Superior, Wis., from St. Paul, Minn. Sleeping-car rates, 102.
- Syracuse, N. Y., to Boston, Mass., and New York, N. Y. Wall plaster, 480.
- Tacoma, Wash., to Washington, Oregon, Idaho, and Montana points. Class rates, 265.
- Tennessee Ridge, Tenn., to Shirley, Ind. Ties, 438.
- Terra Cotta, Ga., to Jacksonville, Fla. Cottonseed, 336.
- Texarkana, Ark., to Alexandria, Mo., and Keokuk, Iowa. Cooperage, 136.
- Texarkana, Ark., via Cairo, Ill., from Lilly, Pa. Blacksmith coal, 527 (528).
- Texarkana, Ark., en route from Onalaska, Ark., to Batchelor, La. Railway equipment, 54.
- Texas common points from New Orleans, La. Bananas, 22.
- Texas points to Milwaukee, Wis. Empty beer packages, 590.
- Thebes, Ill., from Gleason, Ark. Cypress lumber, 348.
- Thomas, W. Va., to Tonopah, Nev. Soft coal, 527.
- Thomaston to Jacksonville, Fla. Cottonseed, 336.
- Thornton, Wyo., from Billings, Mont. Class rates, 71.
- Toledo, Ohio, to Nevada points. Class and commodity rates, 238.
- Toluca, Mont., from Billings, Mont. Class rates, 71.
- Tombstone, Ariz., from Williams, Flagstaff, and Cliffs, Ariz. Lumber, 119.
- Tonopah, Nev., from Thomas, W. Va. Soft coal, 527.
- Topeka, Kans., from Gleason, Ark. Cypress lumber, 348.
- Torrington, Wyo., from Nebraska and Iowa points. Lumber, 156.
- Tracy, Wyo., from Nebraska and Iowa points. Lumber, 156.
- Traverse City, Mich., to Balcom, Ill. Grape or fruit baskets, 487.

LOCALITIES--Continued.

- Winston-Salem, N. C., to Cincinnati and Columbus, Ohio. Lumber, 303.
 Winston-Salem, N. C., from Illinois, Kentucky, and Ohio points. Grain, grain products, hay, and packing-house products, 303.
 Winston-Salem, N. C., from Pocahontas fields. Coal, 303.
 Winston-Salem, N. C., from Virginia and Ohio points. Class rates, 303.
 Wolf Lake, Ind., to South Chicago, Ill. Ice, 572.
 Woodworth, La., to Nebraska points. Yellow-pine lumber and products, 333.
 Worland, Wyo., from Billings, Mont. Class rates, 71.
 Wright, Ga., to Jacksonville, Fla. Cottonseed, 336.
 Wyandotte, Mich., to various points. Wyandotte Cleaner and Cleanser, 507.
 Wyncotte, Wyo., from Omaha and South Omaha, Nebr. Lumber, 156.
 Yellow Pine, La., to Nebraska points. Yellow-pine lumber and products, 333.
 Zwohle, La., to Nebraska points. Yellow-pine lumber and products, 333.

LONG AND SHORT HAUL. See also SECTION FOUR.

- Water competition not proven. Pennsylvania Smelting Co. v. N. P. Ry. Co. 60 (61).
 Facts fail to show violation of long-and-short-haul clause. Preston v. C. & O. Ry. Co. 406 (408).
 Circumstances tending to negative presumption of unreasonableness of greater charge to shorter-distance point. Fisk & Sons v. B. & M. R. R. 299 (301).
 Carrier applied competitive rate to intermediate points so as not to violate the long-and-short-haul clause. Schmidt & Sons v. M. C. R. R. Co. 535 (537).
 Greater charge to intermediate stations will, upon expiration of six months from Aug. 17, 1910, become unlawful, unless application is made to deviate from prescribed rule. Colorado Coal Traffic Assn. v. C. & S. Ry. Co. 478 (479).

LONG HAUL.

- Long-haul through passenger business is more desirable and can be carried at lower rates than strictly local business. Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. 218 (228).

LUCIN CUT-OFF.

- Lucin Cut-off traverses Great Salt Lake. Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co. 259 (261).

MAINTENANCE OF RATE.

- Reasonable rates suggested but not required. City of Spokane v. N. P. Ry. Co. 162 (177).
 Rate unreasonable; reparation awarded; but no rate ordered to be maintained. Northern Lumber Mfg. Co. v. T. & P. Ry. Co. 54 (55).
 Long maintenance of competitive rate was not, upon advance of the rate, an admission that former rate was reasonable. Breese-Trenton Mining Co. v. W. R. R. Co. 598 (600).

MANDAMUS.

- To compel carrier to furnish cars. Hillsdale Coal & Coke Co. v. P. R. R. Co. 356 (367).

MARINE INSURANCE.

- Reparation awarded for unreasonable advances to cover marine insurance protection which was not given. Wyman, Partridge & Co. v. B. & M. R. R. 551.

MARKED CAPACITY.

- Billing at marked capacity in switching service not condemned. Prahlow v. I. H. B. R. R. Co. 572 (574).

MARKETS.

- Market competition discussed. R. R. Commission of Nev. v. S. P. Co. 238 (251).
 Doubtful whether rates may be constructed for express purpose of compelling the manufacture or merchandising of a commodity at particular points. City of Spokane v. N. P. Ry. Co. 162 (168).

MARKETS—Continued.

No jobbing point is entitled, through unfair rate adjustment, to supremacy in a particular consuming territory. *Billings Chamber of Commerce v. C. B. & Q. R. R. Co.* 71 (76).

Location of point at which grain is originally bought and the rates to the several primary markets determine generally where the grain shall be shipped. *Omaha Grain Exchange v. C. & N. W. Ry. Co.* 424 (425).

MEASURE OF RATE.

The law presumes that the measure of reasonableness will be based upon all the many elements of the particular traffic involved. *Ponchatoula Farmers' Assn. v. I. C. R. R. Co.* 513 (516).

Company is entitled to ask a fair return upon the value of property devoted to public use; public is entitled to demand rates not higher than the services are reasonably worth. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (471).

Bulk, value, liability to waste or injury in transit, weight, form in which tendered, etc., must be considered in framing classifications and rates. *Ford Co. v. M. C. R. R. Co.* 507 (509).

Rates can not be made solely with reference to value of the article transported or with reference alone to loss and damage claims arising from transportation. Carrier is entitled to take into consideration the occupancy of its equipment and facilities or to charge for services rendered. This charge may be tested relatively by means of rate per ton per mile, which is most helpful in connection with dense and heavy articles, or value of service and reasonableness of rates may be tested by means of rate per car per mile where articles of same relative weight, density, direction, and volume of movement are in question; but generally the ultimate test with the carrier must be the return for occupation and use of its equipment and facilities. *National Hay Assn. v. M. C. R. R. Co.* 34 (47).

MEETING RATE.

Unjust to fix rates so as to destroy business of one concern and create a monopoly in favor of other concerns, though it be merely incidental to meeting competitive rate. *Spiegle & Co. v. S. Ry. Co.* 522 (525).

MILLING IN TRANSIT.

Refusal to apply inbound expense bills to outgoing shipments; reparation awarded. *Klyce Co. v. I. C. R. R. Co.* 567.

Omaha and Detroit not being served by same carriers, complaint, seeking extension to Detroit of privilege enjoyed at Omaha, dismissed; Commission's policy is to curtail such privileges. *Schmidt & Sons v. M. C. R. R. Co.* 535 (537).

Retroactive application of privilege not sanctioned. *Cady Lumber Co. v. M. P. Ry. Co.* 12 (14).

Carrier ordered to maintain at Newport a milling-in-transit rate not higher than contemporaneously charged at Johnson City. *Spiegle & Co. v. S. Ry. Co.* 522 (526).

Transit privileges are susceptible of defense only upon theory that inbound and outbound movements are parts of a single continuous transaction. In re *Reduced Rates on Returned Shipments*, 409 (417).

MINIMUM.

Tariff rule indefinite. *Davies v. I. C. R. R. Co.* 3 (4).

Minimum rates on private passenger and baggage cars not unreasonable. *Chappelle v. L. & N. R. R. Co.* 56.

Minimum weights on all carload shipments are to be considered as part of rate.

Lull Carriage Co. v. C. K. & S. Ry. Co. 15 (16).

Joint through rate in excess of combination of locals presumed unreasonable, though variable minima applicable to locals. *Id.*

Excessive minimum on empty beer packages. *Miller Brewing Co. v. C. M. & St. P. Ry. Co.* 590 (591).

MINIMUM—Continued.

Car loaded according to carrier's loading restrictions; weight less than minimum; actual weight should govern. *Oregon Lumber Co. v. O. R. R. & N. Co.* 582.

Rule prescribed for making up sufficient weight, where, in mixed carload, aggregate weight falls short of required minimum. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (519).

Minimum as high as product can be carried under most advantageous circumstances, with a comparatively low rate, is, it seems, best for shipper. *Id.* 513 (517).

MISROUTING.

Carrier not liable, when routing instructions followed. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452; *Sikeston Mercantile Co. v. B. & M. R. R.* 422 (423).

Cheapest available reasonable route must be used in absence of routing instructions. *Alpha Portland Cement Co. v. D. L. & W. R. R. Co.* 297 (298).

Beekman Lumber Co. v. L. Ry. & N. Co. 343 (345).

Cameron & Co. v. H. E. & W. T. Ry. Co. 146 (147).

Willson Bros. Lumber Co. v. N. S. R. R. Co. 293 (294).

Carrier chargeable with notice of free unloading and handling service of competitor at Buffalo. *Prentiss v. P. R. R. Co.* 68 (69).

Both initial and connecting lines liable in damages for misrouting. *Beekman Lumber Co. v. L. Ry. & N. Co.* 343 (347).

Carrier not liable for misrouting for forwarding via joint through route though a lower combination existed. *Idaho Lime Co. v. A. T. & S. F. Ry. Co.* 139 (140).

Where rate did not apply over route named, carrier must forward by cheaper route or obtain further instructions. *Alpha Portland Cement Co. v. D. L. & W. R. R. Co.* 297 (298).

Initial carrier not liable for misrouting for not routing via an Ohio River crossing, using as a factor a special commodity rate south of the river, the initial carrier not being a party to the rates named by the line south of the river. *Isbell & Co. v. L. S. & M. S. Ry. Co.* 448.

MIXED CARLOAD.

Groceries. *Orange Grocery Co. v. M. L. & T. R. R. & S. S. Co.* 502.

Sash and doors and compo-board. *Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co.* 110.

Almost universal rule is that entire package goes at rate applicable to highest-rated article in package. *Oak Grove Farm Creamery v. Adams Express Co.* 454 (455).

Rule prescribed for making up sufficient weight, where, in mixed carload, aggregate weight falls short of required minimum. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (519).

MONOPOLY.

Reduction in milling-in-transit rate gave competitive point a practical monopoly. *Spiegle & Co. v. S. Ry. Co.* 522 (525).

NEW LINE.

New line ought to be worth what it cost and ought to earn a return upon that amount. *City of Spokane v. N. P. Ry. Co.* 162 (171).

New line was not required to establish as low a rate as more firmly established road. *DuMee, Son & Co. v. A. T. & N. R. R. Co.* 575 (576).

NONAGENCY STATION.

Davies v. I. C. R. R. Co. 3 (4).

OBJECTS OF THE ACT.

Equality between great and small. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (331).

Speedy and inexpensive method by which shipper could obtain relief. (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (385).

ORDER. *See REFUND*, for cases where order was entered for refund of overcharge.

No order entered pending acceptance of views expressed. *Ford Co. v. M. C. R. R. Co.* 507 (511).

No order entered for present as to part of complaint. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (312).

Order postponed pending bringing in of other defendants. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (332).

Postponement of effective date of order denied. *Loftus v. Pullman Co.* 102.

Commission has complete control to suspend or modify its order. *Id.* 102 (104).

Orders may be modified or set aside at any time within the two years. *National Hay Asso. v. M. C. R. R. Co.* 34 (37).

Previous order rescinded. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 128 (131).

Previous order amended and effective date of new order deferred. *City of Spokane v. N. P. Ry. Co.* 162 (176).

No order entered pending opportunity for express company to file tariffs in accordance with suggestions. *Douglas Shoe Co. v. Adams Express Co.* 539 (543).

Record affording no proper basis, no order entered for present, but carriers expected to conform to Commission's suggestions. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (289).

An order condemning existing rate, awarding reparation, and establishing a rate for the future can not be made on mere complaint, without appearance or evidence. *Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co.* 110 (111).

ORIGIN.

Competitive character of origin of rate. (Dissenting opinion.) *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (472).

Actual point of origin, and not point from which shipment was billed, determined the rate. *Preston v. C. & O. Ry. Co.* 406 (407).

Fact that freight has been shipped once and paid one rate can not be taken into consideration in fixing charges for a subsequent transaction. *In re Reduced Rates on Returned Shipments*, 409 (416).

It makes no difference so far as rate is concerned whether traffic originates at one point or at numerous local stations. *Commercial Club of Salt Lake City v. A. T. & S. Ry. Co.* 218 (228).

Carrier may make distinction in rates concerning commodity that originates at concentration point, so far as its line is concerned, and commodity upon which it has had a haul into concentration point. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

ORIGINAL COST.

Original cost of carrier's property devoted to public use as an element in determining reasonableness of rate. *Portland Chamber of Commerce v. O. R. R. & N. Co.* 265 (280).

OVERCHARGE.

Unloading charge. *Davies v. I. C. R. R. Co.* 3.

Failure to deduct 500 pounds in weight for car stakes and failure to absorb switching charge. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (483).

Reparation claim for straight overcharge barred by section 16, though part of charges paid within two years. *Shoecraft & Son Co. v. I. C. R. R. Co.* 492.

"Overcharge" used in sense that shipment moved through junction upon which combination rate was higher than rate available through other junctions. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336 (337).

OWNER'S RISK.

Owner's risk rule corrected. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (530).

OWNERSHIP.

Change of ownership of milling-in-transit plant would not, it seems, deprive product in transit of transit privilege. *Klyce Co. v. I. C. R. R. Co.* 567 (571).

PACKAGE FREIGHT.

Rule not unreasonable which compels shippers to count packages of perishable freight. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (521).

PACKING.

Form in which goods are presented for shipment must be considered in framing classifications and rates. *Ford Co. v. M. C. R. R. Co.* 507 (509).

PARITY.

Justice can not be done Nevada unless Nevada points are put on a practical parity with eastern Washington and eastern Oregon points. *R. R. Commission of Nev. v. S. P. Co.* 238 (256).

PARTIES.

Reparation is due owner of property paying excessive charge or on whose behalf it was paid. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114 (116); *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 20 (21).

Misjoinder of parties; Commission of its own motion will bring in additional defendants, if they are unwilling to act upon conclusions reached. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (332).

PASSENGER RATE.

Passenger rates found unreasonable; reduced rates prescribed; sparcity of population is hardly a controlling inquiry; question is rather how much passenger business the lines handle and under what circumstances. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (227).

PAYMENT.

May demand charges before delivering freight. *Fiak & Sons v. B. & M. R. R.* 299 (300).

PERISHABLE FREIGHT.

Perishable products afford no proper comparison with dairy products. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397 (402).

Rule not unreasonable that compels shippers to count packages of perishable freight. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (521).

PERSONALITY.

Practice of naming specific consignors and consignees as entitled to special service condemned. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).

Fact that cars are owned and occupied by negroes does not justify slightest discrimination against them. *Chappelle v. L. & N. R. R. Co.* 56 (59); 456 (457).

PHYSICAL OPERATION.

Commission can not require an express company, which has sold out, to resume business. *Douglas Shoe Co. v. Adams Express Co.* 539 (542).

PICK-UP.

Pick-up trains for vegetables. *Davies v. I. C. R. R. Co.* 3.

Free express pick-up and delivery rules held discriminatory. *Strauss v. American Express Co.* 112.

PIECEMEAL.

Commission not disposed to try complaint by piecemeal; reasons for this rule. *Ullman v. American Express Co.* 354 (355).

Reparation awarded in supplemental petition. *Wyman, Partridge Co. v. B. & M. R. R.* 551.

POLITE TREATMENT.

No jurisdiction over polite treatment by carriers. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

POOLING.

Manner of handling validation fees held not to constitute violation of section 5. *Riter v. O. S. L. R. R. Co.* 443 (447).

No proof of pooling traffic from east to Utah points. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (230).

POSTAGE-STAMP SYSTEM OF RATES.

Postage-stamp theory of rates discussed. *Commercial Club of Omaha v. C. & N. W. Ry. Co.* 156 (159).

Transcontinental railroads have made a near approximation to the postage-stamp system of rate making. *R. R. Commission of Nev. v. S. P. Co.* 238 (239).

POSTING TARIFF.

Damages awarded for loss sustained through failure to post tariff changing rates. *Canadian Valley Grain Co. v. C. R. I. & P. Ry. Co.* 108 (109).

POWER OF COMMISSION. See JURISDICTION.**PRECOOLING.**

Commission investigating refrigeration and precooling of citrus-fruit shipments. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (155).

PREFERENCE.

Shipper entitled not only to fair use of facilities but to assurance that no one fares notably better. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (368).

No jobbing point is entitled, through unfair rate adjustment, to supremacy in a particular consuming territory. *Billings Chamber of Commerce v. C. B. & Q. R. R. Co.* 71 (75).

Rates, presumably reasonable in themselves, unduly preferred one point to prejudice and disadvantage of another. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (468).

Free pick-up and delivery of express packages in one part of Milwaukee and refusal of privilege in another part of Milwaukee constituted unlawful preference. *Strauss v. American Express Co.* 112.

PREVIOUS HAUL.

Declined to lower a rate merely because carrier had a previous haul on raw material. *Paragon Plaster Co. v. N. Y. C. & H. R. R. R. Co.* 480.

PRIVATE CARRIER. See COMMON CARRIER.**PRIVATE CARS.**

Demurrage on private cars standing on private tracks. *Procter & Gamble Co. v. C. H. & D. Ry. Co.* 556.

Private car for baggage, containing stove, entitled to baggage car rate. *Chappelle v. L. & N. R. R. Co.* 56 (57).

No doubt of Commission's power to regulate rates upon movement of private equipment. *Id.* 56 (59); *id.* 456.

Carrier may refuse to carry certain classes of private equipment, but it may not discriminate between private cars owned by different persons. *Id.* 456 (457).

Owners of private cars are entitled to their use, even though their number exceeds ratable proportion; but they must be counted against distributive share of mine receiving them. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (364).

It is discrimination to fail to count private cars and assigned cars against distributive share of mine receiving them. *Jacoby & Co. v. P. R. R. Co.* 392.

PRIVILEGES.

Consolidating shipments. *Davies v. I. C. R. R. Co.* 3.

Milling-in-transit privilege. *Klyce Co. v. I. C. R. R. Co.* 567.

Retroactive application of reconsignment privilege not sanctioned. *Cady Lumber Co. v. M. P. Ry. Co.* 12 (13).

Protecting through rate on goods sold at transit point. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452 (453).

PRIVILEGES—Continued.

Diversion and reconsignment in transit without additional charge. *Wilson Produce Co. v. P. R. R. Co.* 1.

Diversion is costly to carrier and advantageous to shipper. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

Reconsignment charge on hay at East St. Louis, Ill., reduced from 2 cents to 1½ cents per 100 pounds. *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.* 533.

Carrier required to maintain at Newport a milling-in-transit rate not higher than contemporaneously charged at Johnson City. *Spiegle & Co. v. S. Ry. Co.* 522.

In-and-out privilege limited to goods coming to concentration point over line of defendant. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

Granting free pick-up and delivery service in one part of Milwaukee constituted unjust discrimination. *Strauss v. American Express Co.* 112.

Transit privileges susceptible of defense only upon theory that inbound and outbound movements are in fact parts of a single continuous transaction. In re *Reduced Rates on Returned Shipments*, 409 (417).

Free track delivery when carrier has line haul. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

Granting free transfer service to private tracks of some consignees constituted unjust discrimination. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).

Omaha and Detroit not being served by same carriers, complaint, seeking extension to Detroit of transit privilege enjoyed at Omaha, dismissed; Commission's policy is to curtail such privileges. *Schmidt & Sons v. M. C. R. R. Co.* 535 (538).

PROFITS.

Commission can not base rates upon profits of shippers; nor are carriers required to regulate rates upon basis of profits of shippers. *Ponchatoula Farmers' Assn. v. I. C. R. R. Co.* 513 (515).

PROHIBITIVE RATE.

Theory rejected that rates may be increased by progressive advances as long as traffic moves freely. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 419 (421).

PROPORTIONAL RATE.

Proportional rate on semianthracite coal of different sizes found unreasonable. *Northern Anthracite Coal Co. v. D. L. & W. R. R. Co.* 549.

Proportional rate, which is different when carrier has haul into concentration point, can be established under tariff authority connecting inbound and outbound movements. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

PROTECTING RATE.

Protecting through rate on goods sold at reconsignment point. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452.

Protecting through rate on goods coming into concentration point over defendant's line. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

PUBLIC INTEREST.

Wiser to permit advance from Buffalo rather than to require reduction from all territory west. *Banner Milling Co. v. N. Y. C. & H. R. R. R. Co.* 128 (131).

If complainants are entitled to a particular rate, relief should not be denied upon ground that certain other communities have been benefited or that the rates which they themselves enjoy to other points have been reduced. *Douglas Shoe Co. v. Adams Express Co.* 539 (541).

PULLMAN BERTHS.

Rehearing granted. *Loftus v. Pullman Co.* 102.

RAILROAD CONSIGNEE.

Free carriage and misrouting of company material. *Chicago Car Lumber Co. v. L. & N. R. R. Co.* 438.

RATE WAR.

Rate wars were unreasonable and their results can not be used as measure of reasonableness. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (463).

REASONABLE RATE. *See also MEASURE OF RATE.*

Compensation implies payment of cost of service, interest on bonds, and then some dividend. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (470).

REBATES.

Cessation of rebating resulted in important net increases in revenue. (*Dissenting opinion.*) *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (472).

REBILLING.

Original movement of shipment, rebilled to point outside state, held to be purely intrastate. *Wells-Higman Co. v. G. R. & I. Ry. Co.* 487 (490).

RECONSIGNMENT.

Diversion is costly to carrier and advantageous to shipper. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

Retroactive application of reconsignment privilege not sanctioned. *Cady Lumber Co. v. M. P. Ry. Co.* 12 (13).

Protecting through rate on goods sold at reconsignment point. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452.

Petition, asking establishment of stop-over privilege, denied. *Schmidt & Sons v. M. C. R. R. Co.* 535.

Reconsignment charge on hay at East St. Louis reduced from 2 cents to 1½ cents per 100 pounds. *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.* 533.

Reparation awarded for charges resulting from failing to obey reconsignment instructions. *Hanley Milling Co. v. P. Co.* 475.

Original movement held to be purely intrastate. *Wells-Higman Co. v. G. R. & I. Ry. Co.* 487 (490).

REDEMPTION.

Of unused coupons from exchange scrip books. *Rickel v. A. T. & S. F. Ry. Co.* 499 (500).

REDUCTION.

Twenty per cent reduction in class rates proposed. *Portland Chamber of Commerce v. O. R. R. & N. Co.* 265.

Commission hesitates to reduce a rate unless clearly excessive. *Chappelle v. L. & N. R. R. Co.* 56 (59).

Since effective date of Hepburn Act, Commission has had authority to fix rates for the future. *National Hay Asso. v. M. C. R. R. Co.* 34 (37).

It does not follow that, because Commission has found a rate unreasonable and established a lower rate for future, former rate was unreasonable at all times in the past. *Ullman v. American Express Co.* 354 (355).

Cases in which Commission ordered reduced rates to be established or maintained:

Arlington Heights Fruit Exchange v. S. P. Co. 148.

Billings Chamber of Commerce v. C. B. & Q. R. R. Co. 71.

Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co. 136.

Chicago Car Lumber Co. v. L. & N. R. R. Co. 438.

Cleary Bros. Co. v. C. & N. W. Ry. Co. 588.

Commercial Club of Omaha v. C. & N. W. Ry. Co. 156.

Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. 218.

Corporation Commission of N. C. v. N. & W. Ry. Co. 303.

DuMee, Son & Co. v. A. T. & N. R. R. Co. 575.

Felton Grain Co. v. U. P. R. R. Co. 63.

Florida Cotton Oil Co. v. C. of G. Ry. Co. 336.

Freeman Lumber Co. v. St. L. I. M. & S. Ry. Co. 348.

Hydraulic-Press Brick Co. v. M. & O. R. R. Co. 530.

REDUCTION—Continued.

- Hydraulic-Press Brick Co. v. St. L. & S. F. R. R. Co. 554.
 Ionia Wagon Co. v. A. G. S. R. R. Co. 458.
 Johnson Co. v. Clyde S. S. Co. 512.
 Louisiana Central Lumber Co. v. C. B. & Q. R. R. Co. 333.
 Maricopa County Commercial Club v. S. F. P. & P. Ry. Co. 257.
 Menefee Bros. v. V. S. & P. Ry. Co. 117.
 Newding v. M. K. & T. Ry. Co. 29.
 Northern Anthracite Coal Co. v. D. L. & W. R. R. Co. 549.
 Oak Grove Farm Creamery v. Adams Express Co. 454.
 Pennsylvania Smelting Co. v. N. P. Ry. Co. 60.
 Ponchatoula Farmers' Asso. v. I. C. R. R. Co. 513.
 Portland Chamber of Commerce v. O. R. R. & N. Co. 265.
 R. R. Commission of Nev. v. S. P. Co. 238.
 Saginaw & Manistee Lumber Co. v. A. T. & S. F. Ry. Co. 119.
 Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co. 141.
 Spiegle & Co. v. S. Ry. Co. 522.
 Traffic Bureau of Merchants Exchange of San Francisco v. S. P. Co. 259.

REFRIGERATION.

- Refrigeration charge not unreasonable. Ponchatoula Farmers' Asso. v. I. C. R. R. Co. 513 (518).
 Moving citrus fruits under refrigeration is more expensive than under ventilation. Arlington Heights Fruit Exchange v. S. P. Co. 148 (154).

REFRIGERATOR CAR.

- Refrigerator car for berries. Running v. C. St. P. M. & O. Ry. Co. 565.
 Refrigerator car for vegetables. Davies v. I. C. R. R. Co. 3.
 Minimum excessive on empty beer packages. Miller Brewing Co. v. C. M. & St. Ry. Co. 590 (591).

REFUND.

- Order entered for refund of overcharge.
 Beekman Lumber Co. v. L. Ry. & N. Co. 343.
 Fisk & Sons v. B. & M. R. R. 299 (302).
 Northern Lumber Mfg. Co. v. T. & P. Ry. Co. 54 (55).
 Southern Cotton Oil Co. v. A. C. L. R. R. Co. 434.
 Wells-Higman Co. v. G. R. & I. Ry. Co. 487 (489).
 Order unnecessary for refund of overcharge.
 Davies v. I. C. R. R. Co. 3.
 Deeves Lumber Co. v. C. & N. W. Ry. Co. 482 (483).
 Fish & Co. v. N. Y. C. & St. L. R. R. Co. 452 (453).
 Isbell & Co. v. L. S. & M. S. Ry. Co. 448 (451).
 Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co. 65 (67).
 Sikeston Mercantile Co. v. B. & M. R. R. 422.
 Refund must be made of unpublished charges and those in excess of published charges. Northern Lumber Mfg. Co. v. T. & P. Ry. Co. 54 (55).
 Willingness of carrier to pay does not form basis upon which Commission can make its findings. Cady Lumber Co. v. M. P. Ry. Co. 12 (14).
 Refund denied on basis of abnormal rate, though carrier willing to make refund. Orange Grocery Co. v. M. L. & T. R. R. & S. S. Co. 502.
 No refund permitted of extra fare paid because of failure to validate ticket. In re Nonvalidation of Limited Excursion Tickets, 440 (442).

REFUSAL.

- In nature of a tort for carrier to close shipper's switch and refuse to place cars thereon. Hilledale Coal & Coke Co. v. P. R. R. Co. 356 (368).

REPARATION—Continued.

No refund for demurrage accrued pending construction of siding; no such delay in furnishing facilities as to make defendant responsible in damages. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290 (292).

Complainant entitled to recover damages for car-distribution discrimination. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (371).

Question of amount of damages from loss of contracts and sales, resulting from car-distribution discrimination, reserved for further argument, majority of Commission being of opinion that it is not for Commission to assess such damages. *Id.*; *Jacoby & Co. v. P. R. R. Co.* 392 (396).

Misquotation of tariff rate is no ground for payment of damages for loss sustained thereby. *Alabama Lumber & Export Co. v. P. B. & W. R. R. Co.* 295.

Reparation will not ordinarily be awarded in formal cases unless intent to demand reparation is specifically disclosed before submission of the case. *Ullman v. American Express Co.* 354 (355).

Commission reserves right to deal as may be deemed proper with claim for reparation disclosing unusual circumstances, where application of general rule might be unjust or inequitable. *Id.*

Initial carrier's tariff naming advanced rate did not cancel lower commutation rate named in tariff of another carrier to which the initial line was a party; advanced rate charged; reparation awarded. *Stilwell v. L. & H. R. Ry. Co.* 404.

If rate unreasonable, carriers had no right to charge it and have no right to proceeds of such charges above reasonable rate. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 419 (421).

In absence of tariff authority, no refund permitted of extra fare paid because of failure to validate ticket. *In re Nonvalidation of Limited Excursion Tickets*, 440 (442).

Reparation awarded for failure to comply with reconsignment instructions; but decline in market price of commodity and commissions for its sale are not within Commission's jurisdiction. *Hanley Milling Co. v. P. Co.* 475 (476).

Reparation awarded for redemption value of unused portion of exchange scrip book. *Rickel v. A. T. & S. F. Ry. Co.* 499 (500).

Reparation awarded on basis of lower rate, voluntarily established by carrier after shipment, taking higher rate, had moved. *Johnson Co. v. Clyde S. S. Co.* 512.

Commission can not award reparation unless it is prepared to find that the rate upon the basis of which reparation is given was a just and reasonable rate. *Orange Grocery Co. v. M. L. & T. R. R. & S. S. Co.* 502 (503).

Two-year limit bars claim for straight overcharge, though part of charges were not paid until two years later. *Shoecraft & Son Co. v. I. C. R. R. Co.* 492.

Agent told passenger that round-trip ticket could be secured at neighboring town; train did not stop long enough to permit purchase of ticket; passenger forced to pay regular fare; damages denied. *Ballin v. S. P. Co.* 503.

Reparation awarded on basis of discriminatory rate charged at competing point; but specific amount of damages to be the subject of further action by Commission. *Spiegle & Co. v. S. Ry. Co.* 522 (526).

Reparation awarded against lake-line defendants for damages because of unreasonable advances to cover marine insurance protection which was never given. *Wyman, Partridge & Co. v. B. & M. R. R.* 551.

Reparation required of both initial and connecting carrier where same shipment was misrouted by both. *Beekman Lumber Co. v. L. Ry. & N. Co.* 343 (347).

Reparation awarded in difference between rate paid on single-deck and rate applicable, before and after the shipment moved, to double-deck cars. *Bowles & McCandless v. L. & N. R. R. Co.* 563.

Damages directly resulting from violation of the act and measurable by difference in rates may be awarded by the Commission. *Id.* 563 (564).

REPARATION—CLASSIFIED LIST.**DISCRIMINATION:**

- Hillsdale Coal & Coke Co. v. P. R. R. Co. 356 (371).
 Klyce Co. v. I. C. R. R. Co. 567.
 Pierce Co. v. N. Y. C. & H. R. R. R. Co. 579.
 Spiegle & Co. v. S. Ry. Co. 522.

MISROUTING:

- Alpha Portland Cement Co. v. D. L. & W. R. R. Co. 297.
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 Cameron & Co. v. H. E. & W. T. Ry. Co. 146.
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OVERCHARGE:

- Cady Lumber Co. v. M. P. Ry. Co. 12.
 Deeves Lumber Co. v. C. & N. W. Ry. Co. 482 (484).
 Fish & Co. v. N. Y. C. & St. L. R. R. Co. 452 (453).
 Hanley Milling Co. v. P. Co. 475.
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 Northern Mfg. Co. v. T. & P. Ry. Co. 54.
 Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co. 65.
 Southern Cotton Oil Co. v. A. C. L. R. R. Co. 434.
 Stilwell v. L. & H. R. Ry. Co. 404.
 Wells-Higman Co. v. G. R. & I. Ry. Co. 487 (489).
 Wilson Produce Co. v. P. R. R. Co. 1.

UNREASONABLE RATE:

- Arlington Heights Fruit Exchange v. S. P. Co. 148 (155).
 Baer Bros. Mercantile Co. v. M. P. Ry. Co. 18.
 Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co. 136.
 Chicago Car Lumber Co. v. L. & N. R. R. Co. 438.
 Cleary Bros. Co. v. C. & N. W. Ry. Co. 588.
 Day Co. v. B. & O. S. W. R. R. Co. 577.
 DuMee, Son & Co. v. A. T. & N. R. R. Co. 575.
 Felton Grain Co. v. U. P. R. R. Co. 63.
 Florida Cotton Oil Co. v. C. of G. Ry. Co. 336 (342).
 Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co. 114.
 Hydraulic-Press Brick Co. v. M. & O. R. R. Co. 530 (531).
 Hydraulic-Press Brick Co. v. St. L. & S. F. R. R. Co. 532.
 Hydraulic-Press Brick Co. v. St. L. & S. F. R. R. Co. 554.
 Ionia Wagon Co. v. A. G. S. R. R. Co. 458.
 Johnson Co. v. Clyde S. S. Co. 512.
 Louisiana Central Lumber Co. v. C. B. & Q. R. R. Co. 333.
 Lull Carriage Co. v. C. K. & S. Ry. Co. 15.
 Menefee Bros. v. V. S. & P. Ry. Co. 117.
 Millar v. N. Y. C. & H. R. R. R. Co. 78.
 Miller Brewing Co. v. C. M. & St. P. Ry. Co. 590.
 Newding v. M. K. & T. Ry. Co. 29.
 Northern Lumber Mfg. Co. v. T. & P. Ry. Co. 54.
 Oregon Lumber Co. v. O. R. R. & N. Co. 582.
 Pennsylvania Smelting Co. v. N. P. Ry. Co. 60.
 St. Louis Hay & Grain Co. v. M. & O. R. R. Co. 533.
 Sligo Iron Store Co. v. U. P. R. R. Co. 527.
 Southern Cotton Oil Co. v. S. P. Co. 79.

REPARATION—CLASSIFIED LIST—Continued.

UNREASONABLE RATE—Continued.

Stilwell v. L. & H. Ry. Co. 404.

Webster Grocer Co. v. C. & N. W. Ry. Co. 493.

Wyman, Partridge & Co. v. B. & M. R. R. 551.

RES ADJUDICATA.

Must follow Supreme Court decisions. City of Spokane v. N. P. Ry. Co. 162 (170);

Fisk & Sons v. B. & M. R. R. 299 (301).

Former decision reviewed as conclusive. Corporation Commission of N. C. v. N. & W. Ry. Co. 303 (307); In re Reduced Rates on Returned Shipments, 409 (416);

Pabst Brewing Co. v. C. M. & St. P. Ry. Co. 584 (587).

Orders with respect to rates are not conclusive beyond period of two years.

National Hay Asso. v. M. C. R. R. Co. 34 (37).

Plea of *res adjudicata* conclusive as to all that preceded effective date of Hepburn Act. *Id.*

Plea of *res adjudicata* has no standing as affecting shipments moving subsequent to decision relied upon. Waco Freight Bureau v. H. & T. C. R. R. Co. 22 (24).

RESTORED RATE.

Mere restoration of former rate is not proof of unreasonableness of rate charged.

Pabst Brewing Co. v. C. M. & St. P. Ry. Co. 584 (586).

Long maintenance of lower rate is in nature of admission of its fairness. Millar v. N. Y. C. & H. R. R. R. Co. 78.

Complainant entitled to through rate which formerly prevailed and which now prevails. Cameron & Co. v. H. E. & W. T. Ry. Co. 146 (147).

RETROACTIVE.

Retroactive application of privilege not sanctioned. Cady Lumber Co. v. M. P. Ry. Co. 12 (13).

RETURNED SHIPMENTS.

Returned-shipment rate in general disapproved; but reduced rates for return of freight which has been refused at destination by consignee justified. In re Reduced Rates on Returned Shipments, 409 (417).

REVENUE.

Ton-per-mile revenue not excessive. Breese-Trenton Mining Co. v. W. R. R. Co. 598 (600).

Ton-per-mile revenue not low. Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co. 136 (137).

Neither per-car nor ton-per-mile earnings show the rate to be unreasonable. Industrial Lumber Co. v. St. L. W. & G. Ry. Co. 50 (52).

Carriers are entitled to reasonable profits on reconsignment service. St. Louis Hay & Grain Co. v. M. & O. R. R. Co. 533 (534).

Ultimate test of reasonableness with carrier itself is the return for the use of its equipment and facilities. National Hay Asso. v. M. C. R. R. Co. 34 (48).

Mere fact of water competition is not proof that rail rates are so low as to deprive carrier of reasonable return. R. R. Commission of Nev. v. S. P. Co. 238 (250).

Unreasonable rates can not be permitted simply because entire result of company's operations might not be as favorable as would otherwise be proper. Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. 218 (222).

Cessation of rebating and diminution of free transportation resulted in important increases in revenue. (Dissenting opinion.) Morgan Grain Co. v. A. C. L. R. R. Co. 460 (472).

Fact that branch lines fail to show large earnings does not justify charging unreasonable rates. Billings Chamber of Commerce v. C. B. & Q. R. R. Co. 71 (75).

Without attempting to say whether this Commission might in any case reduce rates for the sole reason that revenues were found excessive, it has not attempted to do so in this case. City of Spokane v. N. P. Ry. Co. 162 (173).

RISK.

Liability to waste or injury in transit must be considered in framing classifications and rates. *Ford Co. v. M. C. R. R. Co.* 507 (509).

Fact that brick is not subject to loss and damage should be considered in making rates. *Hydraulic-Press Brick Co. v. M. & O. R. R. Co.* 530 (531).

To adjust rates to correspondingly fluctuate with values of products, and resultant fluctuations of carrier's risk is impossible. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

Loss and damage claims on "time" freight under normal conditions are greater than the average of such claims of all commodities. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (469).

More claims relatively from less-than-carload than from carload freight. *Commercial Club of Omaha v. B. & O. R. R. Co.* 397 (400).

Rates can not be made solely with reference to loss and damage claims arising from transportation. *National Hay Asso. v. M. C. R. R. Co.* 34 (47).

ROUND-TRIP TICKET. See also VALIDATION.

No undue discrimination in maintaining round-trip fare from one town and not maintaining such fare from a neighboring town. *Ballin v. S. P. Co.* 503 (504).

ROUTING INSTRUCTIONS.

Instructions followed; not liable for misrouting. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452 (453); *Sikeston Mercantile Co. v. B. & M. R. R.* 422 (423).

Notation on bill of lading puts carrier under obligation to use connecting line's facilities to best advantage of shipper. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

Rate inapplicable to route named, carrier should use cheaper route or obtain further instructions. *Alpha Portland Cement Co. v. D. L. & W. R. R. Co.* 297 (298).

RULE.

Car-distribution rule prescribed. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (365).

Whether validation of tickets is a practice falling within Commission's jurisdiction is not decided. *Riter v. O. S. L. R. R. Co.* 443 (446).

Carriers advised to establish rules regulating refund of extra fare paid because of failure to validate tickets. *In re Nonvalidation of Limited Excursion Tickets*, 440 (442).

SALE.

Sale of 1,000 cars to one shipper. *Jacoby & Co. v. P. R. R. Co.* 392 (395).

Sale of its business by express company to competitor. *Douglas Shoe Co. v. Adams Express Co.* 539.

SCALED RATES.

Scaling rates. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336 (340).

SCRIP BOOK.

Legality not determined. *Rickel v. A. T. & S. F. Ry. Co.* 499 (500).

SECTION ONE.

Imposes on carriers obligation to establish through routes and joint rates. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336 (338).

SECTION TWO.

Construed. *In re Reduced Rates on Returned Shipments*, 409 (415).

SECTION THREE.

Free pick-up and delivery rule constituted violation of section 3. *Strauss v. American Express Co.* 112.

Car-distribution rules violated section 3. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356.

SECTION FOUR.

Water competition created by floating ties down river. *Preston v. C. & O. Ry. Co.* 406.

SECTION FOUR—Continued.

Water competition as affecting rates to Pacific coast. *R. R. Commission of Nev. v. S. P. Co.* 238 (249).

Circumstances tending to negative presumption of unreasonableness of greater charge to shorter-distance point. *Fisk & Sons v. B. & M. R. R.* 299 (301).

Water competition not proven. *Pennsylvania Smelting Co. v. N. P. Ry. Co.* 60 (61).

Where competition compelled low rate to farther-distance point, carrier applied same rate to intermediate points so as not to violate fourth section. *Schmidt & Sons v. M. C. R. R. Co.* 535 (537).

Greater charge to intermediate point will, upon expiration of six months from August 17, 1910, become unlawful unless application is made to deviate from prescribed rule. *Colorado Coal Traffic Asso. v. C. & S. Ry. Co.* 478 (479).

SECTION FIVE.

No pooling of validation fees. *Riter v. O. S. L. R. R. Co.* 443 (447).

SECTION EIGHT.

Construed. (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (373).

SECTION NINE.

Construed. (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (373).

SECTION THIRTEEN.

Construed. (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (382).

SECTION FOURTEEN.

Construed. (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (382).

SECTION FIFTEEN.

Basis of car distribution is a regulation affecting rates within meaning of section 15.

Hillsdale Coal & Coke Co. v. P. R. R. Co. 356 (358).

Whether validation of tickets is a practice affecting rates within jurisdiction of Commission is not decided. *Riter v. O. S. L. R. R. Co.* 443 (446).

SECTION SIXTEEN.

Construed. (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (382).

No jurisdiction over claims barred by section 16. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (594).

Letter setting forth precise nature of claim is sufficient complaint. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114.

Limitation runs from time payment should have been required. *Shoecraft & Son Co. v. I. C. R. R. Co.* 492.

SECTION TWENTY-THREE.¹

Construed. (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (380).

SEVENTH AMENDMENT.

Effect of seventh amendment to the Federal Constitution, providing for jury trial, upon action for damages before Commission, not yet determined by courts.

(Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (384).

SIDETRACK.

Safety of main-line traffic must be considered in locating switches. *Reiter, Curtis & Hill v. N. Y. S. & W. R. R. Co.* 290 (292).

Closing shipper's switch and refusal to place cars thereon. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (368).

Because a spur-track is included in service of one carrier it does not follow that service of another carrier without a spur track is inadequate. *Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co.* 6 (11).

SLEEPING CAR.

Pullman berth rates. Rehearing granted. *Loftus v. Pullman Co.* 102.

SPECIAL RATE.

Special rate on box shooks. *Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co.* 141 (143).

No objection to special rate based on value for damaged goods but no justification for special rates on unsalable goods. In re *Reduced Rates on Returned Shipments*, 409 (418).

SPECIAL SERVICE.

Because a spur track is included in service of one carrier it does not follow that service of another carrier without a spur track is inadequate. *Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co.* 6 (11).

STANDARD TIE.

Six inches by eight inches by eight feet. *American Creosote Works v. I. C. R. R. Co.* 314 (321).

STARE DECISIS.

Former case conclusive. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (307); In re *Reduced Rates on Returned Shipments*, 409 (416); *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 584 (587).

Must follow Supreme Court's decisions. *City of Spokane v. N. P. Ry. Co.* 162 (170); *Fisk & Sons v. B. & M. R. R.* 299 (301).

Former case not necessarily controlling. *Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co.* 141 (143).

Doctrine of *stare decisis* has little application in proceedings before Commission involving economic questions of transportation. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (361).

So far as we are aware, Commission never knowingly departed from rule that reparation is due owner of property paying excessive charges or on whose account it was paid. *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co.* 20 (21).

Plea of *stare decisis* has no standing as affecting shipments moving subsequent to decision relied upon. *Waco Freight Bureau v. H. & T. C. R. R. Co.* 22 (24).

STATE RATE.

Rate established by state commission affords little value for comparative purposes. *Waco Freight Bureau v. H. & T. C. R. R. Co.* 22 (26).

STATE SHIPMENT.

No jurisdiction over state shipments. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (580); *Wells-Higman Co. v. G. R. & I. Ry. Co.* 487 (490).

STATION.

Merging two communities into one municipality does not necessarily merge the two into one community from a transportation point of view. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (331).

Where no discrimination, Commission declined to require carrier to furnish a car shed under which vegetables could be loaded without damage from the weather. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

STATUTE OF LIMITATION. See LIMITATION OF ACTION.

STOCKS AND BONDS.

Commission has no jurisdiction over stock and bond issue of corporations engaged in interstate commerce. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (471).

SUBSTITUTION OF TONNAGE AT TRANSIT POINTS.

Former decision adhered to. *Southern Cotton Oil Co. v. A. C. L. R. R. Co.* 434 (436). No justification for use of old expense bills for purpose of defeating rate. *Klyce Co. v. I. C. R. R. Co.* 567 (570).

SUPPLEMENTAL.

Supplemental petition. *Wyman, Partridge & Co. v. B. & M. R. R.* 551.

SUSPENSION.

Of tariff carrying increased rates. *Cleary Bros. Co. v. C. & N. W. Ry. Co.* 588 (589).

SWITCHING CHARGE.

Flat switching charge on cars of ice. *Prahlow v. I. H. B. R. R. Co.* 572 (574).

Switching charge not unlawful because nine months later it was absorbed. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (483).

Granting free transfer service to private tracks of some consignees and refusing it to complainants held to be unjust discrimination. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).

TANK CARS.

Demurrage on private tank cars standing on private tracks. *Procter & Gamble Co. v. C. H. & D. Ry. Co.* 556.

TAP-LINE ALLOWANCE.

Important carriers are accepting Commission's views on tap-line allowances.

Industrial Lumber Co. v. St. L. W. & G. Ry. Co. 50 (53).

No rate reduction will be ordered to remove discrimination caused by tap-line allowances. *Id.*

TARIFF. See FILING TARIFF AND POSTING TARIFF.

Minimum rule in tariff indefinite. *Davies v. I. C. R. R. Co.* 3.

Demurrage is wrongfully collected where no tariff provision therefor. *Beekman Lumber Co. v. L. Ry. & N. Co.* 343 (347).

Tariff is contrary to law which provides that rate in effect at time of reshipment shall govern. *Southern Cotton Oil Co. v. A. C. L. R. R. Co.* 434 (435).

Initial carrier's advanced rate tariff did not cancel lower commutation rate named in tariff of another line to which initial line was a party; lower rate is the legal rate. *Stilwell v. L. & H. R. Ry. Co.* 404.

Tariff under which exchange scrip books were sold was irregular, so that time limitation for redeeming unused coupons was invalid. *Rickel v. A. T. & S. F. Ry. Co.* 499.

TEHACHAPI PASS.

Traffic Bureau of Merchants' Exchange of San Francisco *v. S. P. Co.* 259 (263).

TEHUANTEPEC ROAD.

R. R. Commission of Nev. v. S. P. Co. 238 (251).

TERMINAL RATES.

Granting Los Angeles terminal rates on strength of water competition at San Pedro and refusing such rates at San Pedro constituted unlawful discrimination. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (331).

TESTING RATES.

Order postponed pending test of proposed rates.

City of Spokane v. N. P. Ry. Co. 162 (178).

Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. 218 (230).

Portland Chamber of Commerce v. O. R. R. & N. Co. 265 (284).

R. R. Commission of Nev. v. S. P. Co. 238 (256).

THEATRICAL CAR.

Chappelle v. L. & N. R. R. Co. 56; *id.* 456.

THROUGH AND LOCAL.

Local rate, restricted to industries and team tracks, formed no part of combination. *Prahlow v. I. H. B. R. R. Co.* 572 (573).

Joint through rate in excess of combination of locals held unreasonable. *Webster Grocer Co. v. C. & N. W. Ry. Co.* 493 (495); *Wells-Higman Co. v. G. R. & I. Ry. Co.* 487 (488).

Joint through rate in excess of combination presumed unreasonable, though variable minima applicable to locals. *Lull Carriage Co. v. C. K. & S. Ry. Co.* 15 (16).

THROUGH AND LOCAL.—Continued.

Existence of lower combination over another route does not present a combination lower than through rate on which presumption obtains that through rate is unreasonable. *Id.* 15 (17).

Through rate for long haul ordinarily should be less than sum of locals. *Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co.* 136 (137).

THROUGH ROUTE AND JOINT RATE.

Where lower combination was established, petition for joint through rate dismissed. *Sligo Iron Store Co. v. U. P. R. R. Co.* 527 (528).

Obligation to establish through routes and joint rates imposed by section one. *Florida Cotton Oil Co. v. C. of G. Ry. Co.* 336 (338).

No jurisdiction to compel through routes and joint rates with carriers operating in Alaska. *Humboldt S. S. Co. v. W. P. & Y. Route*, 105.

No through route and joint rate where one of connecting roads did not file tariffs with Commission. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452 (453).

Carriers engaged in through route in law constitute one line. *R. R. Commission of Nev. v. S. P. Co.* 238 (352).

Application of through rate may be required of express company. *Douglas Shoe Co. v. Adams Express Co.* 539 (543).

Commission's power to require institution of through routes and joint rates is expressly conditioned upon there being no reasonable or satisfactory through route in existence. *Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co.* 6 (10).

Tugboat company, owned by oil company whose products comprised nearly all tugboat company's business, was not entitled to demand through routes and joint rates, even though incorporated as a common carrier. *Gulf Coast Navigation Co. v. K. C. S. Co.* 544.

Through routes and joint rates ordered to be established:

Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co. 136.

Florida Cotton Oil Co. v. C. of G. Ry. Co. 336.

Saginaw & Manistee Lumber Co. v. A. T. & S. F. Ry. Co. 119.

Through routes and joint rates voluntarily established. *Craig Lumber Co. v. V. Ry. Co.* 114.

Denied; because satisfactory through route in existence:

Baer Bros. Mercantile Co. v. M. P. Ry. Co. 18.

Commercial Club of Omaha v. B. & O. R. R. Co. 397 (403).

Southern California Sugar Co. v. S. P. L. A. & S. L. R. R. Co. 6.

TON PER MILE.

Rate per ton per mile entitled to be considered as relative test in rate making. *National Hay Asso. v. M. C. R. R. Co.* 34 (47).

Nearby point in blanket or zone pays more per ton per mile than more distant point. *Schmidt & Sons v. M. C. R. R. Co.* 535 (538).

Ton-per-mile revenue not low. *Bott Bros. Mfg. Co. v. C. B. & Q. R. R. Co.* 136 (137).

Ton-per-mile revenue not unreasonably high. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50 (52).

TONNAGE.

Increased revenue from increased tonnage. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (223).

TORT.

To close shipper's switch and refuse to place cars thereon is in nature of tort. *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (368).

TRACK DELIVERY.

Free track delivery when road has line haul. *Prentiss & Co. v. P. R. R. Co.* 68 (69).
 Granting free transfer service to private tracks of some consignees and refusing it to complainants constituted unjust discrimination. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).

TRAINLOAD.

Giving greater consideration to trainload than to carload traffic would be to the prejudice of small shippers and the public. *Anaconda Copper Mining Co. v. C. & E. R. R. Co.* 592 (596).

TRAIN-MILE EARNINGS.

Discussed. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (151).

TRAIN SPEED.

Between 10 and 11 miles per hour, including stops at divisional points, is nothing more than fair merchandise schedule. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

TRANSCONTINENTAL RATES.

Commission is about making reductions in transcontinental rates. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

Transcontinental railroads have made a near approximation to postage-stamp system of rate making. *R. R. Commission of Nev. v. S. P. Co.* 238 (239).

As a rule, transcontinental rates apply as blanket rates to Pacific coast terminals from all territory upon the Missouri River and east; but to this there are some exceptions. *City of Spokane v. N. P. Ry. Co.* 162 (174).

TRANSFER CHARGE.

Unjust discrimination resulted from refusing free transfer service to private tracks of complainants. *Pierce Co. v. N. Y. C. & H. R. R. R. Co.* 579 (581).

TRANSIT PRIVILEGE.

Reparation awarded where inbound expense bills were not honored on outbound shipments. *Klyce Co. v. I. C. R. R. Co.* 567.

Retroactive application of reconsignment privilege not sanctioned. *Cady Lumber Co. v. M. P. Ry. Co.* 12 (14).

Reconsignment charge on hay at East St. Louis reduced from 2 cents to 1½ cents per 100 pounds. *St. Louis Hay & Grain Co. v. M. & O. R. R. Co.* 533.

Protecting through rate on goods sold at reconsignment point. *Fish & Co. v. N. Y. C. & St. L. R. R. Co.* 452.

Diversion without additional charge. *Wilson Produce Co. v. P. R. R. Co.* 1.

Diversion is costly to carrier and advantageous to shipper. *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

Milling-in-transit rate, not higher than charged at favored point, ordered to be maintained. *Spiegle & Co. v. S. Ry. Co.* 522 (526).

Transit privileges susceptible of defense only upon theory that inbound and outbound movements are parts of a single continuous transaction. In re *Reduced Rates on Returned Shipments*, 409 (417).

There should be tariff provision connecting inbound with outbound movements. *St. Paul Board of Trade v. M. St. P. & S. Ste. M. Ry. Co.* 285 (288).

TRUNK LINE.

Extension of Trunk Line rates to points where such conditions do not exist, disapproved. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (309).

TUNNEL.

Cost of tunnel is not to be charged to traffic between its two mouths. *Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co.* 259 (261).

ULTIMATE CHARGE.

It is the ultimate charge to which Commission's rule is directed. *Lull Carriage Co. v. C. K. & S. Ry. Co.* 15 (16).

UNDERCHARGE.

Florida Cotton Oil Co. v. C. of G. Ry. Co. 336 (342).

Pabst Brewing Co. v. C. M. & St. P. Ry. Co. 584 (585).

Undercharge deducted from overcharge. Wells-Higman Co. v. G. R. & I. Ry. Co. 487 (489).

UNIFORM DEMURRAGE.

Rules discussed. Procter & Gamble Co. v. C. H. & D. Ry. Co. 556 (558).

Investigation and explanation. In re Demurrage Investigation, 496.

UNIT.

Branch lines are operated as part of a great system. Billings Chamber of Commerce v. C. B. & Q. R. R. Co. 71 (75).

Carriers engaged in through route in law constitute one line. R. R. Commission of Nev. v. S. P. Co. 238 (252).

A road is built and operated as a whole. Traffic Bureau of Merchants' Exchange of San Francisco v. S. P. Co. 259 (261).

UNLOADING. See LOADING AND UNLOADING.**UNREASONABLE RATE.**

If rate was unreasonable, carrier had no right to charge it and has no right to proceeds of such charge above a reasonable rate. Commercial Club of Omaha v. A. & S. R. Ry. Co. 419 (421).

Unreasonable rate can not be permitted simply because entire result of company's operations might not be as favorable as would otherwise be proper. Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. 218 (222).

It does not follow that, because Commission has found a rate unreasonable and established a lower rate for future, former rate was unreasonable at all times in the past. Ullman v. American Express Co. 354 (355).

Great force in claim that no schedule of rates can be right which permits merchandise to be hauled from the east over the Cascade Mountains to Seattle and back again to consumers upon east side of that mountain range. City of Spokane v. N. P. Ry. Co. 162 (167).

UNSALEABLE GOODS.

Can be no justification for special rates on unsaleable goods. In re Reduced Rates on Returned Shipments, 409 (418).

USE.

Improper to base rate upon use to which commodity may be put. Anaconda Copper Mining Co. v. C. & E. R. R. Co. 592 (596).

Higher rate on coke used in smelting copper, silver, etc., than charged on coke for blast-furnace use held not unreasonable. *Id.* 592 (597).

VALIDATION.

No refund of extra fare paid for failure to validate ticket. Carriers advised to establish tariff rule regulating such refund. In re Nonvalidation of Limited Excursion Tickets, 440 (442).

Where there is tariff authority, it is no violation of act to require validation of limited excursion tickets, and to charge validation fee therefor. Riter v. O. S. L. R. R. Co. 443 (444).

Advertisements of excursions should state total amount to be exacted, of which validation is a part. *Id.*

Whether validation of tickets is a practice falling within jurisdiction of Commission is not decided. *Id.* 443 (446).

VALUATION.

Carrier's property devoted to public use as a measure of rate. City of Spokane v. N. P. Ry. Co. 162 (170); Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co. 218 (223); Portland Chamber of Commerce v. O. R. R. & N. Co. 265 (280).

Physical valuation of railroad property has not been authorized by federal authority. Morgan Grain Co. v. A. C. L. R. R. Co. 460 (471).

VALUE.

Value must be taken into consideration in framing classifications and rates. *Ford Co. v. M. C. R. R. Co.* 507 (509).

Rates can not be made solely with reference to value of article transported. *National Hay Asso. v. M. C. R. R. Co.* 34 (47).

Smithing coal, being of greater value, might properly be charged a higher rate than ordinary bituminous coal. *Sligo Iron Store Co. v. U. P. R. R. Co.* 527 (529).

Axiomatic that rates depend largely upon value; no objection to special rate for damaged or defective goods, based upon low value of freight. In re *Reduced Rates on Returned Shipments*, 409 (418).

We do not feel justified in ordering a reduction of an any-quantity rate to 39 cents per 100 pounds upon a commodity worth from 15 to 30 cents per pound. *Schmidt & Sons v. M. C. R. R. Co.* 535 (538).

To adjust rates to correspondingly fluctuate with the values of products moving under them is impossible. *Ponchatoula Farmers' Asso. v. I. C. R. R. Co.* 513 (515).

VALUE OF SERVICE.

Value of service entitled to be considered in rate making. *National Hay Asso. v. M. C. R. R. Co.* 34 (47).

VOLUME.

As element of rate making. *National Hay Asso. v. M. C. R. R. Co.* 34 (47).

Volume of business comparatively small. *Billings Chamber of Commerce v. C. B. & Q. R. R. Co.* 71 (75).

Fact that brick moves in large quantities should be considered in making rate. *Hydraulic-Press Brick Co. v. M. & O. R. R. Co.* 530 (531).

If rate remains the same and cost of service continues the same, increase in tonnage must produce increased revenue. *Commercial Club of Salt Lake City v. A. T. & S. F. Ry. Co.* 218 (223).

VOLUNTARY RATE AND VOLUNTARY REDUCTION.

Long maintenance of voluntary rate raises presumption of fairness. *Gamble-Robinson Commission Co. v. St. L. & S. F. R. R. Co.* 114 (116).

Long maintenance of voluntary rate imposes duty on carrier to give good reason for advance. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (468).

Long maintenance of subsequently restored rate is in nature of admission of its fairness. *Millar v. N. Y. C. & H. R. R. Co.* 78.

Mere restoration of lower rate is not proof of unreasonableness of rate charged. *Pabst Brewing Co. v. C. M. & St. P. Ry. Co.* 584 (586).

Reparation awarded on basis of voluntarily established reduced rate. *Hydraulic-Press Brick Co. v. St. L. & S. F. R. R. Co.* 554; *Johnson Co. v. Clyde S. S. Co.* 512; *Sligo Iron Store Co. v. U. P. R. R. Co.* 527 (528).

WAREHOUSE DELIVERY.

Free, when road has line haul. *Prentiss & Co. v. P. R. R. Co.* 68 (69).

WATER CARRIER.

Reparation awarded against lake-line defendants. *Wyman, Partridge & Co. v. B. & M. R. R.* 551.

Water carrier, owned by shipper, not entitled to through routes and joint rates, though incorporated as a carrier common. *Gulf Coast Navigation Co. v. K. C. S. Ry. Co.* 544.

WATER COMPETITION.

Water competition not proven. *Pennsylvania Smelting Co. v. N. P. Ry. Co.* 60 (61). Created by floating ties down river. *Preston v. C. & O. Ry. Co.* 406 (407).

Affecting domestic and export lumber rates. *Industrial Lumber Co. v. St. L. W. & G. Ry. Co.* 50 (52).

At their pleasure, carriers may or may not meet competition, so long as no undue discrimination or preference results. *Harbor City Wholesale Co. of San Pedro v. S. P. Co.* 323 (329).

WATER COMPETITION—Continued.

Granting Los Angeles terminal rates on strength of water competition at San Pedro and refusing such rates at San Pedro is unjust discrimination. *Id.* 323 (331).

That carriers may meet water competition at whatever point and to whatever extent they see fit can not be admitted. *City of Spokane v. N. P. Ry. Co.* 162 (168).

Mere statement that terminal points are situated on the water is not sufficient to excuse higher rates at intermediate points. *R. R. Commission of Nev. v. S. P. Co.* 238 (250).

WEAK LINE.

Not required to establish as low a rate as more firmly established lines. *DuMee, Son & Co. v. A. T. & N. R. R. Co.* 575 (576).

In this case it is necessary that carriers be permitted to charge rates that are fully compensatory for the services they perform so long as they are not unreasonable. *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (471).

WEIGHT.

Refund for excess charge. *Isbell & Co. v. L. S. & M. S. Ry. Co.* 448 (451).

Weight of bread hampers. *Oak Grove Farm Creamery v. Adams Express Co.* 454 (455).

Allowance of 500 pounds for car stakes. *Deeves Lumber Co. v. C. & N. W. Ry. Co.* 482 (483).

Weight must be taken into consideration in framing classifications and rates. *Ford Co. v. M. C. R. R. Co.* 507 (509).

Billing at marked capacity in switching service not condemned. *Prahlow v. I. H. B. R. R. Co.* 572 (574).

Car loaded according to carrier's loading restrictions; weight less than minimum; actual weight should govern. *Oregon Lumber Co. v. O. R. R. & N. Co.* 582.

WHARF FACILITIES.

Alleged discrimination at Skagway, Alaska; no jurisdiction. *Humboldt S. S. Co. v. W. P. & Y. Route*, 105.

WHAT TRAFFIC WILL BEAR.

Mere fact that traffic will bear the imposition does not justify unreasonable rate.

R. R. Commission of Nev. v. S. P. Co. 238 (249).

Commission not ready to accept theory that rates may lawfully be increased as long as traffic moves freely. *Commercial Club of Omaha v. A. & S. R. Ry. Co.* 419 (421).

WORDS AND PHRASES DEFINED.

"Assigned cars." *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (362).

"Commercial capacity" of mine. *Id.* 356 (359).

"Compensation." *Morgan Grain Co. v. A. C. L. R. R. Co.* 460 (470).

"Compo-board." *Quammen & Austad Lumber Co. v. C. M. & St. P. Ry. Co.* 110.

"Diversion." *Arlington Heights Fruit Exchange v. S. P. Co.* 148 (152).

"Exchange scrip book." *Rickel v. A. T. & S. F. Ry. Co.* 499.

"Gas grates." *Ohio Foundry Co. v. P. C. C. & St. L. Ry. Co.* 65 (66).

"Organic act." (Dissenting opinion.) *In re Jurisdiction in Alaska*, 81 (96).

"Pool cars." *Portland Chamber of Commerce v. O. R. R. & N. Co.* 265 (270).

"Rate damages." (Dissenting opinion.) *Hillsdale Coal & Coke Co. v. P. R. R. Co.* 356 (374).

"System cars." *Id.* 356 (362).

ZONE RATE.

Every city is entitled to advantage of its location, even though included in zone system. *Corporation Commission of N. C. v. N. & W. Ry. Co.* 303 (309).

In every zone rate, the near-by point pays a proportionally higher rate than a more distant point. *Schmidt & Sons v. M. C. R. R. Co.* 535 (539).



